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OF THE STATE OF MONTANA**

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Table of Contents

Volume I

Officers and Members of the Montana Senate
Officers and Members of the Montana House of Representatives
Title Contents of Bills and Resolutions
Chapters 1-243

Volume II

Chapters 244-419
House Joint Resolutions
House Resolutions
Senate Joint Resolutions
Senate Resolutions
2010 Ballot Issues
Tables
 Code Sections Affected
 Session Laws Affected
 Senate Bill to Chapter Number
 House Bill to Chapter Number
 Chapter Number to Bill Number
 Effective Dates By Chapter Number
 Effective Dates By Date
 Session Law to Code
 2010 Ballot Issues to Code
Index to Appropriations
General Index

Volume II

Chapters 244-419	945
House Joint Resolutions	1835
House Resolutions	1850
Senate Joint Resolutions	1879
Senate Resolutions	1922
2010 Ballot Issues	1969
Tables	
Code Sections Affected	1987
Session Laws Affected	2022
Senate Bill to Chapter Number	2023
House Bill to Chapter Number	2024
Chapter Number to Bill Number	2025
Effective Dates By Chapter Number	2028

Effective Dates By Date	2035
Session Law to Code.....	2044
2010 Ballot Issues to Code	2060
Index to Appropriations.....	Appendix
General Index	Appendix

CHAPTER NO. 244

[HB 166]

AN ACT GENERALLY REVISING WEED CONTROL LAWS; REQUIRING COUNTY APPROVAL OF WEED MANAGEMENT PLANS; CLARIFYING DUTY OF A PROPERTY OWNER TO INFORM THE OWNER'S AGENT AND THE PURCHASER OF WEED INFESTATIONS AND MANAGEMENT; REVISING FUNDING OPTIONS; AMENDING SECTIONS 7-4-2711, 7-22-2103, 7-22-2109, 7-22-2116, 7-22-2120, 7-22-2121, 7-22-2126, 7-22-2141, 7-22-2142, 7-22-2153, AND 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-4-2711, MCA, is amended to read:

“7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. The county attorney shall attend their meetings when required and shall attend and oppose all claims and accounts against the county that are unjust or illegal. The county attorney shall defend all suits brought against the county.

(2) The county attorney shall:

(a) give, when required and without fee, an opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within the county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to ~~7-22-2103~~ 7-22-2109, act as counsel, without fee; and

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners.”

Section 2. Section 7-22-2103, MCA, is amended to read:

“7-22-2103. District weed board — *appointment* — commissioner powers. (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

(2) *Upon a recommendation from the weed board, the commissioners may appoint a weed coordinator.*

(3) *The commissioners shall approve, approve with revisions, or reject a weed management plan submitted pursuant to 7-22-2121.*

~~(2) The board may call upon the county attorney for legal advice and services as it may require.”~~

Section 3. Section 7-22-2109, MCA, is amended to read:

“7-22-2109. Powers and duties of board — ~~use of inmates in county jail work program.~~ (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) ~~employ~~ *supervise* a coordinator and other employees ~~as necessary~~ and provide for their compensation;

(b) purchase chemicals, materials, and equipment and pay other operational costs ~~that it determines~~ necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;

~~(e) enter into agreements with the county sheriff for the use of inmate labor for weed management under this part through a county jail work program that is authorized under 7-32-2225 through 7-32-2227;~~

~~(f)~~(e) enter into cost-share agreements for noxious weed management;

~~(g)~~(f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds;

(g) *request legal advice and services from the county attorney; and*

(h) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed management program;

(b) establish management criteria for noxious weeds on all land within the district; and

(c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency."

Section 4. Section 7-22-2116, MCA, is amended to read:

"7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale. (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the ~~person who owns the property~~ *person who owns the property* shall notify ~~the owner's agent and the owner's agent and~~ the purchaser of:

(a) the existence of noxious ~~weeds~~ *weed infestations* on the property offered for sale; and

(b) *the existence of a noxious weed management program or a noxious weed management agreement as provided in subsection (1)."*

Section 5. Section 7-22-2120, MCA, is amended to read:

"7-22-2120. Funding — reporting requirements — emergency exemption. (1) (a) Before a district ~~is eligible to receive from~~ *applies to* the state for any state funding or federal funding, the district shall provide the department with a ~~comprehensive~~ weed management plan, as provided in 7-22-2121, and with a copy of the resolution creating the board.

~~(b) Upon receipt of the district's comprehensive weed management plan by the department, the district may apply for and receive state funding.~~

~~(e)~~(b) *After the initial submission of the weed management plan, the district's comprehensive weed management plan must be updated and submitted to the department every 2 years.*

~~(d)~~(c) *The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities.*

(2) *The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7-815."*

Section 6. Section 7-22-2121, MCA, is amended to read:

"7-22-2121. Weed management program. (1) *The noxious weed management program must be based on a plan approved by the board and the commissioners.*

(2) *The noxious weed management plan must:*

(a) *specify the goals and priorities of the program;*

(b) *review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;*

(c) *specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and*

(d) *estimate the personnel, operations, and equipment costs of the proposed program;*

(e) *develop a compliance plan or strategy; and*

(f) *incorporate cooperative agreements established pursuant to 7-22-2151.*

(3) *The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the confines of the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. Where at all possible, methods for such control shall include cultural, chemical, and biological methods.*

(4) *The board may establish special management zones within the district. The management criteria in such those zones may be more or less stringent than the general management criteria for the district."*

Section 7. Section 7-22-2126, MCA, is amended to read:

"7-22-2126. Embargo. (1) *The board may establish embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.*

(2) *The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.*

(3) *A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not move transport or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo is found to have met all of meets the requirements of the state certification program and the department*

verifies compliance with the program, the board shall release the embargo. The board may also release the forage *may also be released if the board under the following conditions:*

(a) ~~verification of~~ *verifies the* guaranteed delivery back to the original producer, as defined in 80-7-903;

(b) *approves* burning or disposal of the forage ~~in a manner acceptable to the board;~~ or

(c) *approves* other alternatives ~~approved by the board.~~

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees ~~any of the conditions set forth~~ in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.”

Section 8. Section 7-22-2141, MCA, is amended to read:

“7-22-2141. Noxious weed fund authorized. (1) The commissioners of ~~each county in this state~~ shall create a noxious weed ~~management~~ fund, ~~to be designated the “noxious weed fund” to be used only for purposes authorized by this part.~~

(2) ~~This fund shall be kept separate and distinct by the county treasurer. The fund must be maintained by the county treasurer in accordance with 7-6-2111.”~~

Section 9. Section 7-22-2142, MCA, is amended to read:

“7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from ~~the general fund of the county~~ *any source in an amount of not less than \$100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property;* and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county ~~or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or \$100,000.~~ The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) ~~The Subject to 15-10-420, the~~ commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. ~~The Pursuant to an election held in accordance with 15-10-425, the~~ amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.”

Section 10. Section 7-22-2153, MCA, is amended to read:

“7-22-2153. ~~Voluntary agreements~~ Agreements for control of noxious weeds along roads — liability of landowner who objects to weed district control measures — penalties. (1) ~~Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through the person’s land. The coordinator may draft a voluntary agreement upon the request of and in cooperation with the person. However, the agreement must, in the board’s judgment, provide for effective weed management. The board may enter into an agreement with a landowner that allows the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the landowner’s property.~~

(2) ~~The weed management agreement must be signed by the person landowner and, upon approval of the board, by the board’s presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.~~

(2)(3) ~~The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the person landowner or anyone acting on behalf of the landowner in managing noxious weeds on the state or county highway right-of-way pursuant to the agreement. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the person signing the agreement landowner who signed the agreement.~~

(4) ~~If the board later finds that the person landowner has failed to adhere to violates the agreement, the board shall issue an order informing the person landowner that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the person landowner complies with the provisions of the agreement within a specified time period.~~

(3)(5) (a) ~~If a person landowner objects to weed control measures bordering a state or county highway right-of-way along a state or county highway or road that borders or bisects the landowner’s property and does not enter a voluntary into an agreement pursuant to subsections (1) and (2) this section and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the person landowner that the management of noxious weeds on the right-of-way will be undertaken by the board unless the person landowner provides to the board an acceptable plan of alternative weed control within 30 days.~~

(b) ~~A person who does not provide alternative weed control within the time specified in subsection (3)(a) is guilty of Failing to provide alternative weed control pursuant to subsection (5)(a) is a misdemeanor. and, upon conviction,~~

Upon conviction, an offender shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than \$500 or more than \$2,000, plus the costs of weed control provided by the board.

Section 11. Section 80-7-814, MCA, is amended to read:

“80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches \$10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

(3) The principal of the noxious weed management trust fund in excess of \$10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program ~~with~~ *using one of the following methods, whichever is less:*

(a) ~~a levy in~~ *levying* an amount of not less than 1.6 mills or an equivalent amount from another source; or

(b) ~~by appropriating~~ *appropriating* an amount of not less than \$100,000 ~~for first-class counties, as defined in 7-1-2111~~ *from any source.*

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

Section 12. Coordination instruction. If House Bill No. 212 and [this act] are both passed and approved and if both contain a section that amends 80-7-814, then the sections amending 80-7-814 are void and 80-7-814 must be amended as follows:

“80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches \$10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

(3) The principal of the noxious weed management trust fund in excess of \$10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded

its own weed management program ~~with~~ *using one of the following methods, whichever is lesser:*

(a) ~~a levy in~~ *levying* an amount not less than 1.6 mills or an equivalent amount from another source; or

(b) *by appropriating* an amount of not less than \$100,000 ~~for first-class counties, as defined in 7-1-2111~~ *from any source.*

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

Section 13. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 245

[HB 196]

AN ACT ALLOWING THE DEPARTMENT OF COMMERCE TO REVIEW, ANALYZE, AND COMMENT ON BEHALF OF LOCAL GOVERNMENTS REGARDING SIGNIFICANT FEDERAL LAND MANAGEMENT PROPOSALS; PROVIDING FOR RULEMAKING; AND ESTABLISHING ADVOCACY ON BEHALF OF LOCAL GOVERNMENTS AS A FUNCTION OF

THE DEPARTMENT OF COMMERCE REGARDING FEDERAL LAND MANAGEMENT PROPOSALS.

WHEREAS, the Department of Commerce has a responsibility to maintain and advance the socioeconomic health of Montana communities; and

WHEREAS, Montana communities often lack the resources to quickly analyze and comment on federal land management proposals that may impact their communities; and

WHEREAS, the lack of regularity regarding federal land management proposals affecting Montana communities complicates responses by local governments and additionally means there is little need for a separate state program while still a need to respond in a timely manner.

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

Section 1. Functions of department of commerce — socioeconomic advocacy. The department of commerce may, if funds are available, advocate on behalf of local governments, as defined in 7-11-1002, by reviewing, analyzing, and commenting on prospective impacts on local socioeconomic conditions from federal land management proposals.

Section 2. State assistance to local governments in review of and comment on federal land management proposals — rulemaking. (1) In carrying out the provisions of [section 1], the department of commerce may conduct on behalf of local governments a socioeconomic impact review and analysis of significant federal land management proposals. The department of commerce may use the review and analysis to comment in a timely manner on the federal proposals regarding projected impacts on local government.

(2) The department of commerce may:

(a) establish a minimal procedure for local governments to request from the department a review and analysis of significant federal land management proposals that may have a direct socioeconomic impact on the community for which the local government has requested the review. The request must include sufficient details about the federal land management proposal for the department of commerce to determine a deadline by which the review must be conducted.

(b) contract with a unit of the Montana university system experienced in technical, doctorate-level analysis of the socioeconomic impacts of federal land management proposals to provide an independent economic analysis of the federal proposals;

(c) advocate on behalf of the local government before the agency issuing the federal land management proposals, using the reports generated under this subsection (2); and

(d) report to an appropriate legislative interim committee regarding the number of requests, the types of requests, and the number of responses handled annually. The department shall post the information under this subsection (2)(d) on its website along with a summary of each requested analysis.

(3) The department of commerce may adopt rules to implement this section.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [sections 1 and 2].

Approved April 21, 2011

CHAPTER NO. 246

[HB 216]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES FOR HARDSHIP LICENSES THAT ALLOW PERMITHOLDERS 14 YEARS OF AGE OR OLDER TO OPERATE A MOTOR VEHICLE TO OR FROM A SCHOOL BUS STOP WITHOUT A PARENT OR LEGAL GUARDIAN; REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY; AND AMENDING SECTION 61-5-125, MCA.

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

Section 1. Section 61-5-125, MCA, is amended to read:

“61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) *The department shall adopt rules governing the issuance of a hardship license to an underage applicant, including but not limited to an applicant who is 14 years of age or older who holds a valid instruction permit or a traffic education learner license under 61-5-106. The rules must consider whether a hardship license is needed because the applicant's licensed parent or guardian is*

not available to accompany the permitholder due to employment or circumstances related to the operation of a farm or ranch and the permitholder is required to drive more than 7 miles from the permitholder's residence to the permitholder's school bus stop.

~~(a)~~(4) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

~~(b)~~—issuance of a hardship license to an underage applicant;

~~(c)~~(b) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

~~(d)~~(c) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

~~(e)~~(d) restrictions to be imposed upon a probationary license;

~~(f)~~(e) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty;

~~(g)~~(f) issuance of a replacement driver's license; and

~~(h)~~(g) a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law."

Approved April 21, 2011

CHAPTER NO. 247

[HB 277]

AN ACT ALLOWING A LOCAL GOVERNMENT TO AUTHORIZE THE USE OF GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS; DEFINING "GOLF CART"; REQUIRING REGISTRATION OF CERTAIN GOLF CARTS; AMENDING SECTIONS 10-3-1307, 23-1-105, 61-1-101, 61-3-312, 61-3-321, 61-3-332, 61-6-158, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Operation of golf carts — unlawful operation — exception — required equipment. (1) A person may not operate a golf cart on a public street or highway open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local governing body of the county, city, or town for a public street or highway under its jurisdiction.

(2) A person operating a golf cart under this section must have a valid driver's license.

(3) A golf cart may not be operated on a public street or highway when permitted by this section unless it is equipped with:

(a) at least one and not more than two headlamps;

(b) at least one taillamp;

(c) at least one reflector;

(d) stop lamps;

(e) a horn; and

(f) a mirror that reflects to the driver a view of the highway.

(4) Except as provided in 61-3-321, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

Section 2. Section 10-3-1307, MCA, is amended to read:

“10-3-1307. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of \$2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of \$4,500 must be assessed for the first cask designed for transport by rail and a fee of \$3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and 61-3-321(13)(14) and 61-10-127 do not apply.”

Section 3. Section 23-1-105, MCA, is amended to read:

“23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321~~(18)(a)~~(19)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.”

Section 4. Section 61-1-101, MCA, is amended to read:

“61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Authorized agent” means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department’s motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), “person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) “Authorized agent agreement” means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) “Bus” means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) “Business entity” means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) “Camper” means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(7) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (8):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(9) "Commission" means the state transportation commission.

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(11) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(16) “Dolly or converter gear” means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) “Domiciled” means a place where:

- (a) an individual establishes residence;
- (b) a business entity maintains its principal place of business;
- (c) the business entity’s registered agent maintains an address; or
- (d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(18) “Driver” means a person who drives or is in actual physical control of a vehicle.

(19) “Driver’s license” means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

- (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
- (c) any nonresident’s driving privilege;
- (d) a motorcycle endorsement; or
- (e) a commercial driver’s license.

(20) “Electric personal assistive mobility device” means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(21) “For hire” means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(22) “*Golf cart*” means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(22)(23) “Gross vehicle weight” means the weight of a vehicle without load plus the weight of any load on the vehicle.

(23)(24) “Highway” or “public highway” means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(24)(25) “Highway patrol officer” means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(25)(26) “Implement of husbandry” means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner’s agricultural operations.

(26)(27) “Kit vehicle” is a motor vehicle assembled from a manufactured kit either as:

- (a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or
- (b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(27)(28) “Light vehicle” means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer’s rated capacity of 1 ton or less.

~~(28)~~(29) “Manufactured home” has the meaning provided in 15-24-201.

~~(29)~~(30) “Manufacturer” includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

~~(30)~~(31) “Manufacturer’s certificate of origin” means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer’s agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(31)~~(32) (a) “Medium-speed electric vehicle” is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer’s compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle’s maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

~~(32)~~(33) “Mobile home” or “housetrailer” has the meaning provided in 15-24-201.

~~(33)~~(34) “Montana resident” means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(34)~~(35) (a) “Motorboat” means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(35)~~(36) (a) “Motor carrier” means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(36)~~(37) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(37)~~(38) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(38)~~(39) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(39)~~(40) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(40)~~(41) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9;

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to [section 1].

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a

motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(41)(42) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(42)(43) "Nonresident" means a person who is not a Montana resident.

(43)(44) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(44)(45) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

(45)(46) "Operator" means a person who is in actual physical control of a motor vehicle.

(46)(47) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(47)(48) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(48)(49) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(49)(50) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(50)~~(51) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(51)~~(52) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(52)~~(53) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(53)~~(54) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(54)~~(55) "Recreational vehicle" includes a motor home, travel trailer, or camper.

~~(55)~~(56) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(56)~~(57) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(57)~~(58) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(58)~~(59) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

~~(59)~~(60) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(60)~~(61) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(61)~~(62) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(62)~~(63) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

~~(63)~~(64) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(64)~~(65) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(65)~~(66) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(66)~~(67) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(67)~~(68) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(68)~~(69) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(69)~~(70) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

(70)(71) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(71)(72) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(72)(73) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(73)(74) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(74)(75) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(75)(76) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(76)(77) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(77)(78) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(78)(79) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(79)~~~~(80)~~ “Truck” or “motortruck” means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(80)~~~~(81)~~ “Truck tractor” means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(81)~~~~(82)~~ “Under the influence” has the meaning provided in 61-8-401.

~~(82)~~~~(83)~~ “Used motor vehicle” includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as “secondhand” within the ordinary meaning of that term.

~~(83)~~~~(84)~~ “Van” means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(84)~~~~(85)~~ (a) “Vehicle” means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(85)~~~~(86)~~ “Vehicle identification number” means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(86)~~~~(87)~~ “Vessel” means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(87)~~~~(88)~~ “Wholesaler” means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1.”

Section 5. Section 61-3-312, MCA, is amended to read:

“61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle’s registration period following the expiration of the motor vehicle’s registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle’s registration by submitting full payment for the fees or taxes required under 61-3-303 and ~~61-3-321~~~~(42)~~~~(13)~~ to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning July 1, 2011, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period and if, beginning July 1, 2011, the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 6. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (19) (20):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, \$217;

(b) if the vehicle is 5 through 10 years old, \$87; and

(c) if the vehicle is 11 or more years old, \$28.

(3) Except as provided in subsection (14) (15), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, \$61.25; or

(b) if the declared weight is 6,000 pounds or more, \$148.25.

(4) Except as provided in subsection (14) (15), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, \$10; and

(b) under 2,850 pounds, \$5.

(5) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, \$282.50;

(ii) 2 years old and less than 5 years old, \$224.25;

(iii) 5 years old and less than 8 years old, \$132.50; and

(iv) 8 years old and older, \$97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of \$237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of \$5, which must be deposited in the account established under 61-6-158; and

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, \$72; and

(b) 16 feet in length or longer, \$152.

(10) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and ~~(14)~~ (15), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of \$40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) The one-time registration fee for golf carts authorized to operate on certain public streets and highways pursuant to [section 1] is \$25. Upon receipt of the fee, the department shall issue the owner a decal, which must be displayed visibly on the golf cart.

~~(12)~~(13) (a) Except as provided in subsection ~~(12)(b)~~ (13)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection ~~(12)~~ (13) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection ~~(12)(a)~~ (13)(a) must be deposited in the state general fund.

~~(13)~~(14) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

~~(14)~~(15) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

~~(15)~~(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(16)~~(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

~~(17)~~(18) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

~~(18)~~(19) (a) Unless a person exercises the option in subsection ~~(18)(b)~~ (19)(b), an additional fee of \$4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$4 fee, the department of fish, wildlife, and parks shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection ~~(18)(a)~~ (19)(a). If a written election is made, the fee may not be collected.

~~(19)(20)~~ For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

~~(20)(21)~~ This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.”

Section 7. Section 61-3-332, MCA, is amended to read:

“61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word “permanent” on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under 61-3-332, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until

January 1, 2015, and upon payment of the fee required in ~~61-3-321(12)(b)~~ *61-3-321(13)(b)*, a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are

used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 8. Section 61-6-158, MCA, is amended to read:

“61-6-158. Vehicle insurance verification and license plate operating account. (1) There is a vehicle insurance verification and license plate operating account in the state special revenue fund type as provided in 17-2-102.

(2) Fees imposed under 61-3-321(7)(b)(ii) and ~~(12)~~ (13), 61-3-333, 61-3-465(1)(b)(i), 61-3-480(2)(c)(i), or 61-3-562(1)(a)(ii) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the vehicle insurance verification and license plate operating account must be used by the department to pay costs incurred in or associated with the operation, maintenance, and enhancement of the system established under 61-6-157 and the contract required in 61-3-338 for the manufacture and distribution of license plates by Montana correctional enterprises.”

Section 9. Section 61-12-101, MCA, is amended to read:

“61-12-101. Powers of local authorities to regulate traffic. The provisions of chapters 8 and 9 do not prevent local authorities with respect to sidewalks, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating the traffic by means of police officers or traffic control devices;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles on those highways be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway, as defined in 61-8-341, and requiring that all vehicles stop before entering or crossing a through highway and designating any intersection, as defined in 61-8-102, as a stop intersection and requiring all vehicles to stop at one or more entrances to stop intersections;
- (7) restricting the use of highways as authorized in 61-10-128(2);
- (8) regulating the operation of bicycles, as defined in 61-8-102, and requiring the registration and licensing of bicycles, including requiring a registration fee;
- (9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
- (10) altering the speed limits as authorized in Title 7, chapter 14, and Title 61, chapter 8;
- (11) regulating the operating of a vehicle by a person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree that renders the person incapable of safely operating a vehicle within the incorporated limits of any city or town;
- (12) regulating or prohibiting a person who is under the influence of intoxicating liquor from operating or being in actual physical control of a vehicle within the incorporated limits of a city or town;

(13) regulating or prohibiting the operation of a vehicle by a person in willful or wanton disregard for the safety of persons or property within the incorporated limits of a city or town;

(14) enacting as ordinances any provisions of chapter 8 or 9 and any other law regulating traffic, pedestrians, vehicles, and operators of vehicles that are not in conflict with state law or federal regulations and enforcing the ordinances; ~~and~~

(15) regulating the operation of motorized nonstandard vehicles, ~~as defined in 61-1-101,~~ on sidewalks, streets, and highways; *and*

(16) regulating the operation of golf carts on streets and highways.”

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

Section 11. Coordination instruction. If both House Bill No. 213 and [this act] are passed and approved, then the section of [this act] amending 61-1-101 is void and the definition of “motor vehicle” in 61-1-101 must be amended as follows:

“(40) (a) “Motor vehicle” means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; *and*

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to [section 1 of this act] or by a person with a low-speed restricted driver’s license.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.”

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 22, 2011

CHAPTER NO. 248

[HB 291]

AN ACT PROVIDING A REFUND TO CERTAIN CUSTOMERS WHO PAY FOR THE EXTENSION OF A UTILITY LINE TO A RESIDENTIAL STRUCTURE IF ADDITIONAL CUSTOMERS CONNECT TO THE EXTENSION; REQUIRING EACH ADDITIONAL CUSTOMER TO ADVANCE TO THE ELECTRIC UTILITY AN EQUAL PROPORTIONATE SHARE OF THE TOTAL AMOUNT PAID FOR THE EXTENSION; REQUIRING A REFUND OF THE ADVANCE ON A PRO RATA BASIS; PROHIBITING A SMALL CUSTOMER FROM RECEIVING A REFUND GREATER THAN THE CUSTOMER’S PROPORTIONATE SHARE OF THE COSTS; LIMITING THE REFUND TO A CERTAIN PERIOD OF TIME; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in [section 2] and this section, the following definitions apply:

(1) “Electric utility” means a public utility regulated by the public service commission pursuant to Title 69, chapter 3, that provides electrical service for heat, light, or power to a small customer.

(2) “Extension” means any works or improvements necessary to connect a residential structure of a small customer to an electric utility’s distribution or transmission system.

(3) “Residential structure” means a single-family house, trailer, manufactured home, or mobile home, excluding any outbuildings, improvements, irrigation pumps, facilities, or other structures located on the property.

(4) “Small customer” has the meaning provided in 69-3-2003.

Section 2. Residential utility line extension — refund. (1) A small customer of an electric utility who pays for a portion of the construction of an extension to a residential structure or who advances money to the electric utility for a subsequent connection to that extension must receive a refund as provided in subsection (2) if an additional customer connects to the extension.

(2) Each additional customer, prior to the initiation of electric service, shall advance to the electric utility an equal proportionate share of the total amount paid for the extension. The electric utility shall refund the advance on a pro rata basis to the small customer who paid for the initial extension or to the small customer who paid for a subsequent connection to that extension. A refund may not be issued after 10 years from the date the initial extension is established.

(3) A small customer who expends funds for an extension may not receive a refund that is greater than the amount necessary to return the small customer to the small customer’s proportionate share of the cost of the original extension.

(4) A small customer may receive a refund pursuant to this section only if:

(a) the small customer paid for the initial extension or subsequent connection to the extension pursuant to subsection (1); and

(b) at the time the refund is issued, the small customer owns the residential structure to which the extension or subsequent connection to the extension was made.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 5, and the provisions of Title 69, chapter 5, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to extensions occurring on or after [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 249

[HB 295]

AN ACT GENERALLY REVISING WIND EASEMENTS AND WIND ENERGY RIGHTS; DEFINING WIND ENERGY RIGHTS AS PROPERTY RIGHTS; PROVIDING WIND ENERGY RIGHTS ARE APPURTENANT TO THE SURFACE ESTATE; PROVIDING FOR WIND EASEMENTS; PROVIDING FOR WIND OPTION AGREEMENTS AND WIND ENERGY AGREEMENTS

AND THEIR MINIMUM REQUIREMENTS; AFFIRMING THE DOMINANCE OF A MINERAL ESTATE; AMENDING SECTION 70-17-203, MCA; REPEALING SECTION 70-17-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 8] may be cited as the “Wind Energy Rights Act”.

Section 2. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) “Wind easement” means the right granted by the owner of real property to a wind energy developer guaranteeing the developer the right to use the real property legally described in a wind energy agreement and the wind resource located on and flowing over its surface to develop a wind energy project. A wind easement is an interest in real property.

(2) “Wind energy agreement” means any wind energy lease, license, or any other written document entered into between the owner of the real property and the wind energy developer that contains the wind easement.

(3) “Wind energy developer” means the person that enters into a wind option agreement or wind energy agreement with the owner of the real property for the purpose of developing a wind energy project.

(4) “Wind energy right” means an interest in real property on and over which the wind resource is located and flows that is appurtenant to the real property.

(5) “Wind option agreement” means a written agreement in which the owner of real property grants a wind energy developer an exclusive right to obtain a wind easement through a wind energy agreement.

Section 3. Wind easement creation — terms. (1) A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.

(2) The wind easement runs with the real property on and over which the wind resource flows.

(3) A wind easement terminates under the terms and conditions outlined in the wind easement.

Section 4. Severance of wind energy rights limited. (1) A wind energy right in the wind resource located on and flowing over the real property, including without limitation a royalty, if applicable, associated with the production of wind energy may not be severed from the real property even though a wind easement may be created pursuant to [sections 1 through 8].

(2) Nothing in this section may be construed to prohibit or limit the right of a seller of the real property to retain any payments associated with an existing wind option agreement or wind energy agreement.

Section 5. Wind option agreements — contents and requirements — notarization. (1) A wind option agreement executed after [the effective date of this act] must contain but is not limited to:

- (a) the names and addresses of the parties to the wind option agreement;
- (b) a legal description of the real property subject to the wind option agreement;
- (c) the specified term beyond which the wind option agreement terminates and the real property is released from the obligations outlined in the wind option agreement;

(d) compensation for the owner of the real property on and over which the wind resource flows; and

(e) other terms and conditions agreed upon by the owner of the real property and the wind energy developer.

(2) A wind option agreement must be notarized.

(3) A wind option agreement may not exceed 20 years unless extended by agreement of the parties.

Section 6. Wind energy agreement — contents and requirements — notarization. (1) A wind energy agreement executed after [the effective date of this act] must contain but is not limited to:

(a) the names and addresses of the parties to the wind energy agreement;

(b) a legal description of the real property subject to the wind easement and contained in the wind energy agreement;

(c) the obligations of the owner of the real property to ensure the undisturbed flow of wind on and over the real property, including restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the wind flow on and over the real property. Structures do not include equipment necessary to access minerals as they relate to the rights belonging to or the dominance of the mineral estate pursuant to [section 8].

(d) a specified term including the date on which the wind energy agreement or wind easement terminates;

(e) provisions to compensate the owner of the real property for the wind easement;

(f) provisions ensuring that the owner of the real property is not liable for any property tax associated with the wind energy project or other equipment related to the development of the wind energy project during the term of the wind energy agreement;

(g) provisions addressing property owner and wind energy developer liability during the construction and operation of the wind energy project and equipment;

(h) provisions obligating the wind energy developer to comply with federal, state, and local laws and regulations; and

(i) conditions upon which the wind energy agreement may be terminated prior to its termination date.

(2) A wind energy agreement must be notarized.

(3) If the terms of the wind energy agreement do not contain the requirements listed in subsection (1), a court may void the wind energy agreement or order any relief allowed by law.

Section 7. Wind energy agreements — grandfather clause. [Sections 1 through 8] may not be construed to alter, amend, diminish, or invalidate wind energy rights acquired by contract, agreement, or lease prior to [the effective date of this act].

Section 8. Preservation of property rights. [Sections 1 through 8] may not be construed to:

(1) change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate; or

(2) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights.

(3) Notwithstanding the provisions of [sections 1 through 8] or a wind energy agreement, the real property owner retains the right to grant easements or rights-of-way for all electric power lines to be located on the property.

Section 9. Section 70-17-203, MCA, is amended to read:

“70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; ~~and~~

(b) conservation easements pursuant to 76-6-209; *and*

(c) *wind easements pursuant to [sections 1 through 8].*

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor’s assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned.”

Section 10. Repealer. The following section of the Montana Code Annotated is repealed:

70-17-303. Wind energy easement.

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 70, chapter 17, and the provisions of Title 70, chapter 17, apply to [sections 1 through 8].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 250

[HB 336]

AN ACT REVISING PENALTIES FOR THE WASTE OF GAME ANIMALS, GAME FISH, GAME BIRDS, AND FUR-BEARING ANIMALS; REQUIRING FORFEITURE OF PRIVILEGES AND PAYMENT OF RESTITUTION; AND AMENDING SECTIONS 87-1-111, 87-1-115, 87-3-102, AND 87-3-506, MCA.

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

Section 1. Section 87-1-111, MCA, is amended to read:

“87-1-111. Restitution for illegal killing, ~~or~~ possession, or waste of certain wildlife. (1) Except as provided in 87-1-115 and in addition to other

penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, ~~or~~ possession, *or waste* of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

- (a) ~~bighorn~~ mountain sheep and endangered species, \$2,000;
- (b) elk, caribou, bald eagle, black bear, wolf, and moose, \$1,000;
- (c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, \$500;
- (d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, \$300;
- (e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), \$100;
- (f) game bird (except swan), \$25;
- (g) game fish, \$10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.”

Section 2. Section 87-1-115, MCA, is amended to read:

“87-1-115. Restitution for illegal killing, ~~or~~ possession, or waste of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the purposeful or knowing illegal killing, taking, ~~or~~ possession, *or waste* of a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

- (1) ~~bighorn~~ mountain sheep with at least one horn equal to or greater than three-fourth curl as defined by commission regulation, \$30,000;
- (2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, \$8,000;
- (3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, \$6,000;
- (4) antlered deer with at least four points on one antler as defined by commission regulation, \$8,000;
- (5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, \$2,000.”

Section 3. Section 87-3-102, MCA, is amended to read:

“87-3-102. Waste of fish, birds, or game. (1) A person who is responsible for the death of a mountain lion ~~or wolf~~, except as provided in 87-3-130, commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion ~~or wolf~~, commits the offense of waste of game if the person purposely or knowingly:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all of these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food commits the offense of waste of game if the person purposely or knowingly:

(a) transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of ~~waste of game~~ *a violation of this section* may be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, ~~may be subject to forfeiture of~~ *shall*:

(a) *forfeit* any current hunting, fishing, ~~and or~~ trapping licenses *license* issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture; unless the court imposes a longer forfeiture period. ~~If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap, the~~ *The* department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification.

(b) *pay restitution pursuant to 87-1-111 or 87-1-115.*"

Section 4. Section 87-3-506, MCA, is amended to read:

"87-3-506. Wasting of fur-bearing animals. (1) A person commits the offense of wasting a fur-bearing animal if that person purposely or knowingly:

(a) fails to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attends traps or snares so that fur-bearing animals are wasted; or

(c) wastes the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) (a) Federal, state, and county predator control programs are exempt from this section.

(b) Pelts of muskrat and beaver killed pursuant to 87-3-501(2) are exempt from this section.

(4) *A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:*

(a) *forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period. The department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification.*

(b) *pay restitution pursuant to 87-1-111.*

(4)(5) As used in this section, “pelt” means the pelt, skin, or fur of a fur-bearing animal.”

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 251

[HB 411]

AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO AUTHORIZE THE ACTUAL COST OF MEALS FOR CERTAIN FIREFIGHTERS IF THE COSTS EXCEED THE PRESCRIBED MAXIMUM STANDARD RATE PER MEAL; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-18-501, MCA, is amended to read:

“2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person’s designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal *except as provided in subsection (10)*. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) *The Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:*

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (1), (2)(a), or (4)(a).

(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:

(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:

(i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and

(ii) \$155 per night for lodging.

(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

(10) *When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.*

(11) *For the purposes of implementing subsection (10), the following definitions apply:*

(a) *“Firefighter” means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.*

(b) *“Wildfire” means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.”*

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

Approved April 21, 2011

CHAPTER NO. 252

[HB 522]

AN ACT GENERALLY REVISING LAWS REGARDING THE LOCAL REGULATION OF SUBDIVISIONS; AUTHORIZING A GOVERNING BODY TO EXTEND THE APPROVAL OF A SUBDIVISION APPLICATION AND

PRELIMINARY PLAT FOR A MUTUALLY AGREED-UPON PERIOD OF TIME; REQUIRING THE AGREEMENT FOR THE EXTENSION TO BE IN WRITING; PROVIDING THAT A GOVERNING BODY MAY ISSUE MORE THAN ONE EXTENSION; AND AMENDING SECTION 76-3-610.

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

Section 1. Section 76-3-610, MCA, is amended to read:

“76-3-610. Effect of approval of application and preliminary plat. (1)

Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for *a mutually agreed-upon period of time no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider’s agent. The governing body may issue more than one extension.*

(2) Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).”

Section 2. Applicability. [This act] applies to subdivision applications and preliminary plats approved prior to [the effective date of this act] and to those approved on or after [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 253

[HB 538]

AN ACT ALLOWING LOCAL GOVERNMENT BONDS TO BE SOLD AT PUBLIC OR PRIVATE SALE; ESTABLISHING A MINIMUM SALE PRICE; AMENDING SECTIONS 7-7-2212, 7-7-2238, 7-7-2251, 7-7-2252, 7-7-2254, 7-7-4211, 7-7-4236, 7-7-4251, 7-7-4252, 7-7-4254, 7-7-4433, 7-7-4434, 7-10-220, 7-10-221, 7-12-2172, 7-12-4204, 7-14-4652, 7-15-4507, 7-31-113, 20-9-429, 20-9-430, 20-9-431, 20-9-432, 85-7-1436, 85-7-1437, 85-7-2022, 85-7-2023, 85-7-2033, 85-8-503, AND 85-9-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Public or private sale — procedure for public sale. (1) The governing body of a political subdivision may sell its bonds at public or private sale as determined by the governing body, and if the bonds are sold at private sale, in denominations and forms approved by the governing body. If the governing body conducts a public sale, those provisions of state law regarding the public sale of bonds that pertain to the political subdivision govern the sale.

(2) The bonds must be sold at not less than 97% of the principal amount of the bonds if the governing body determines that a sale at that price is in the best interests of the political subdivision.

Section 2. Section 7-7-2212, MCA, is amended to read:

“7-7-2212. Citizen bonds authorized. (1) A county authorized to sell general obligation bonds under this chapter may issue and sell a portion of the bonds in denominations of less than \$5,000, ~~either by~~ *by*:

(a) competitive public sale, ~~or~~ directly to members of the public, at preestablished interest rates; *or*

(b) *private sale pursuant to [section 1]*.

(2) Bonds issued under 7-7-2212 through 7-7-2215 may be known as “citizen bonds”.

(3) Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds.

(4) An officer, employee, contracted financial consultant, or contracted adviser employed or retained by a county selling citizen bonds may not purchase those bonds.”

Section 3. Section 7-7-2238, MCA, is amended to read:

“7-7-2238. Resolution to sell bonds pursuant to public sale. (1) If a sufficient percentage of the qualified electors entitled to vote at an election voted on the question and a sufficient percentage of votes were cast in favor of issuing bonds as provided in 7-7-2237 *and if the board of county commissioners conducts a public sale*, the board of county commissioners shall adopt a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any; and

(g) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The board may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The board of county commissioners may fix the minimum price for the bonds in an amount less than the principal amount of the bonds, which may not be less than 97% of the principal amount, if the board determines that a sale at that price is in the best interests of the county.”

Section 4. Section 7-7-2251, MCA, is amended to read:

“7-7-2251. Form of notice of sale of bonds. (1) ~~The~~ *If a county conducts a public sale*, the notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of... County, state of Montana, that the board will on the... day of..., ..., at the hour of... ..m., at the office of the board in the courthouse in the (town or city) of... in the said county, sell to the highest and best bidder for cash general obligation bonds of the county in the principal amount of... dollars (\$...) for the purpose of....

The bonds will be issued and sold in the aggregate principal amount of... dollars (\$....) and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the board of county commissioners). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of....,, will pay interest commencing on the.... day of.... (month),, will be payable semiannually on the.... day of.... (month) and.... (month) in each year thereafter, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than \$...., with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed ...% a year.) The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of.... dollars (\$....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the board of county commissioners and delivered to the county clerk.

ATTEST:
(Presiding officer, Board of County Commissioners)
of..... County, Montana

.....
(Clerk of the Board of County Commissioners)
of..... County, Montana
Address....., Montana

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-2212 through 7-7-2215.”

Section 5. Section 7-7-2252, MCA, is amended to read:

“7-7-2252. Publication of notice of sale of bonds. ~~The~~ *If a county conducts a public sale, the* board of county commissioners shall publish notice of the bond sale in the official newspaper of the county as provided in 17-5-106. The board may in its discretion publish the notice or a summary of the notice in any financial newspapers published in the city of New York or Chicago.”

Section 6. Section 7-7-2254, MCA, is amended to read:

“7-7-2254. Procedure for sale of bonds. (1) ~~The~~ *Any bonds issued under the authority of this part may be sold at public or private sale as determined by the board of county commissioners pursuant to [section 1]. If the board of county commissioners conducts a public sale, it* shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The board shall accept the bid that it judges most advantageous to the

county. The board may reject any bids and sell the bonds at private sale if the board considers it in the best interests of the county.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, preparation of the bonds, or negotiating the sale of the bonds.”

Section 7. Section 7-7-4211, MCA, is amended to read:

“7-7-4211. Citizen bonds authorized. (1) A city or town authorized to sell general obligation bonds under this chapter may issue and sell any portion of the bond in denominations of less than \$5,000, ~~either~~ by:

(a) competitive public sale, ~~or~~ directly to members of the public, at preestablished interest rates; *or*

(b) *private sale.*

(2) Citizen bonds may be issued for any purpose for which a city or town may issue general obligation bonds.

(3) Bonds issued under 7-7-4211 through 7-7-4213 may be known as “citizen bonds”.

(4) An officer, employee, contracted financial consultant, or contracted advisor employed or retained by a city or town selling citizen bonds may not purchase those bonds.”

Section 8. Section 7-7-4236, MCA, is amended to read:

“7-7-4236. Resolution to sell bonds pursuant to public sale. (1) If issuing of bonds has been approved as provided in 7-7-4235 *and the city or town council conducts a public sale*, the city or town council shall pass a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any;

(g) that a bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued; and

(h) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The council may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The city or town council may fix the minimum price for the bonds in an amount not less than 97% of the face value if the city or town council determines that the sale is in the best interests of the city or town.”

Section 9. Section 7-7-4251, MCA, is amended to read:

“7-7-4251. Form of notice of sale of bonds. (1) ~~The~~ *If a city or town conducts a public sale*, the notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of...., Montana, that the council will, on the.... day of....., at the hour of.....m., at its council chamber in the (city or town) of...., Montana, sell to the highest and best bidder for cash general obligation bonds of the (city or town) in the total amount of... dollars, (\$....) for the purpose of....

The bonds will be issued and sold in the aggregate principal amount of... dollars (\$....) each and will become due and payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).

The bonds must bear an original issue date of....., must pay interest commencing on the... day of... (month),... and are payable semiannually on the... day of... and on the... day of... in each year thereafter and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

The bonds will be sold for not less than \$...., with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed...% a year.) The council reserves the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-203) in the sum of... dollars (\$....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the council of the (city or town) of... and delivered to the clerk of the (city or town).

.....
Mayor of the (city or town) of
....., Montana

ATTEST:

.....
(City or Town) Clerk

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-4211 through 7-7-4213.”

Section 10. Section 7-7-4252, MCA, is amended to read:

“7-7-4252. Publication of notice of sale. ~~The~~ *If a city or town conducts a public sale, the city or town council or commission shall cause ~~such~~ a notice to be published as provided in 17-5-106 in a newspaper of general circulation printed and published in ~~said~~ the city or town if there ~~be one~~ is a newspaper of general circulation and, if not, then in a newspaper of general circulation printed and published in the county in which ~~said~~ the city or town is located. The council or commission may in its discretion cause ~~such~~ the notice to be published in ~~such~~ ~~other~~ another newspaper or newspapers published either within or ~~without~~ outside of the state as that in the opinion of the council or commission will be most likely to give notice of ~~such~~ the sale to prospective bidders.”*

Section 11. Section 7-7-4254, MCA, is amended to read:

“7-7-4254. Procedure for sale of bonds. (1) ~~The~~ *Any bonds issued under the authority of this part may be sold at public or private sale, as determined by the city or town council or commission pursuant to [section 1]. If the city or town*

council or commission conducts a public sale, it shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The council shall accept the bid that it judges most advantageous to the city or town. The council may reject any bids and sell the bonds at private sale if the council considers it in the best interests of the city or town.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale of the bonds.”

Section 12. Section 7-7-4433, MCA, is amended to read:

“7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part ~~must~~ may be sold at a public or private sale as determined by the governing body pursuant to [section 1] at a price not less than that prescribed by the governing body, plus interest to the date of delivery of the bonds.

(2) ~~(a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.~~

~~(b) Unless sold at a private sale, to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.”~~

Section 13. Section 7-7-4434, MCA, is amended to read:

“7-7-4434. Notice of sale of bonds. The notice of sale of bonds required by 7-7-4433(2)~~(b)~~ for bonds sold publicly must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the governing body may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.”

Section 14. Section 7-10-220, MCA, is amended to read:

“7-10-220. Sale of bonds. (1) Bonds authorized to be issued under this part ~~must~~ may be sold at a public or private sale as determined by the governing body of the regional resource authority pursuant to [section 1] at a price not less than that prescribed by the governing body of the regional resource authority, plus interest to the date of delivery of the bonds.

(2) ~~(a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.~~

~~(b) Unless sold at a private sale to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.”~~

Section 15. Section 7-10-221, MCA, is amended to read:

“7-10-221. Notice of sale of bonds. The notice of sale of bonds required by 7-10-220(2)~~(b)~~ for bonds sold publicly must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the regional resource authority may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.”

Section 16. Section 7-12-2172, MCA, is amended to read:

“7-12-2172. Procedure to issue bonds and warrants. (1) Subject to subsection (2), the board of county commissioners shall sell bonds or warrants

issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount *not* less than 97% of the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

(2) ~~(a) Subject to subsection (2)(b), the~~ *The* bonds or warrants may be sold at a private negotiated sale *as determined by the board of county commissioners pursuant to [section 1] and subject to the requirements of 7-12-2171.* ~~to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.~~

~~(b) Bonds in amounts up to \$1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.~~

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 that relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, ~~insofar as they are~~ *when* applicable and not in conflict with the provisions of 7-12-2173 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants.”

Section 17. Section 7-12-4204, MCA, is amended to read:

“7-12-4204. Procedure to issue bonds and warrants. (1) Subject to subsection (2), the city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against benefited property within the district, to the highest and best bidder for cash at a price, including interest to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount *not* less than 97% of the face value if it determines that the sale is in the best interests of the district and the city.

(2) ~~(a) Subject to subsection (2)(b), the~~ *The* bonds or warrants may be sold at a private negotiated sale *as determined by the city or town council pursuant to [section 1] and subject to the requirements of 7-12-4203.* ~~to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.~~

~~(b) Bonds in amounts up to \$1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.~~

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, ~~insofar as the same are~~ *when* applicable and not in conflict with the provisions of 7-12-4205 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling the bonds or warrants.”

Section 18. Section 7-14-4652, MCA, is amended to read:

“7-14-4652. Details relating to sale of revenue bonds. (1) The commission may fix terms and conditions for the public or private sale or other

disposition of any authorized issue of bonds. The commission may sell bonds at a price not less than ~~95%~~ 97% of their par or face value.

(2) Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction, or completion of which the bonds have been issued and for a period of not to exceed 2 years thereafter, as provided for in the indenture.”

Section 19. Section 7-15-4507, MCA, is amended to read:

“7-15-4507. Sale of bonds. (1) ~~The~~ Any bonds issued by the authority may be sold at public or private sale, as determined by the authority pursuant to [section 1]. ~~If the authority conducts a public sale, the bonds may be sold at public sale held after notice published once at least 10 days prior to such the sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of or in the city of~~

(2) ~~Such~~ The bonds may be sold to the federal government at private sale pursuant to [section 1] without any public advertisement.

(3) The bonds may be sold at ~~such~~ a price or prices as determined by the authority ~~shall determine.~~”

Section 20. Section 7-31-113, MCA, is amended to read:

“7-31-113. Disposition of bonds. (1) The board of county commissioners or council, as the case may be:

(a) may provide by said contract for the delivery of said bonds ~~or any part thereof at their~~ a price not less than 97% of face value, upon the terms and conditions provided in said the contract; or

(b) may sell and dispose of ~~the same or any part thereof~~ bonds at public or private sale at a price not less than 97% of face value to raise funds to carry out said the contract and use ~~such the~~ funds for that purpose and for the payment of any expert ~~or experts~~ or any incidental expenses proper and necessary in and about said completing the contract and the carrying out of the same.

(2) In the event ~~said that the~~ bonds are sold at public sale, ~~they shall the~~ bonds must be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation ~~which may be~~ printed and published in each county in the state and also by publication in at least three newspapers of general circulation printed and published in the cities of Boston and New York. ~~Such~~ The notice ~~shall~~ must be published at least once a week and ~~shall~~ must contain, in substance, a description of said the bonds as set out in 7-31-112.”

Section 21. Section 20-9-429, MCA, is amended to read:

“20-9-429. Trustees’ resolution to issue school district bonds pursuant to public sale. ~~Anytime~~ If the trustees conduct a public sale, at any time after the date of the election certificate, the trustees shall adopt a resolution calling for the sale of bonds of the school district. The resolution must specify:

- (1) the number of series or installments in which the bonds are to be issued;
- (2) the amount of bonds to be issued;
- (3) the minimum purchase price of the bonds;
- (4) the purpose or purposes of the issue;
- (5) the date that the issue will bear;
- (6) the period of time through which the issue will be paid;
- (7) the manner of execution of the bonds;

(8) whether bids will be accepted for either serial or amortization bonds and, if so, the denomination of serial or amortization bonds;

(9) the date and time that the sale of the bonds must be conducted; and

(10) the minimum price fixed by the board of trustees for the bonds, which may not be less than 97% of the principal amount of the bonds if the board determines that the sale is in the best interests of the district.”

Section 22. Section 20-9-430, MCA, is amended to read:

“20-9-430. Notice of sale Sale of school district bonds and notice of public sale. The trustees may sell school district bonds at public or private sale pursuant to [section 1]. If the trustees conduct a public sale, the trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. of County, state of Montana, that the trustees will on the day of,, at the hour of o'clockm. at, in the school district, sell to the highest and best bidder for cash (state here: general obligation or impact aid revenue) bonds of the school district in the total amount of dollars (\$), for the purpose of

The bonds will be issued and sold in the aggregate principal amount of dollars (\$) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of,, will pay interest commencing on the day of (month),, will be payable semiannually on the day of (month) and (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than \$, with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of dollars (\$) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

.....
Presiding officer, School District No.....
of County
Address:

ATTEST:

Subscribed and sworn to before me this day of,;
..... Notary Public for the State residing at, Montana.
My commission expires

Section 23. Section 20-9-431, MCA, is amended to read:

“20-9-431. Publication of notice of sale of school district bonds. *The If the trustees conduct a public sale, the trustees shall publish the notice of sale of the bonds, as provided in 17-5-106, in one or more newspapers as determined by the trustees.*”

Section 24. Section 20-9-432, MCA, is amended to read:

“20-9-432. Sale of school district bonds. (1) ~~The~~ *If the trustees conduct a public sale, the trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds must be sold at not less than the minimum bid specified for bonds with accrued interest to date of delivery, and each bidder shall specify the rate of interest and purchase price at which the bidder will purchase the bonds. The trustees shall accept the bid that they judge most advantageous to the school district. Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any bids and to sell the bonds at private sale if they consider it in the best interests of the school district, except that the bonds may not be sold at less than the minimum sale price with accrued interest to date of delivery.*

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating the sale of bond issues if, in the opinion of the trustees, the cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. However, bond issues prepared or negotiated for sale under this section may not be combined for any other purpose but must be entered separately on the books of the county treasurer and must be otherwise treated as separate bond issues.”

Section 25. Section 85-7-1436, MCA, is amended to read:

“85-7-1436. Sale of bonds. (1) Bonds authorized to be issued may be sold at a price *not* less than 97% of face value if the issuer determines that the sale is in the best interests of the irrigation district.

(2) ~~(a) The bonds may be sold at public or private sale as determined by the irrigation district pursuant to [section 1] to the United States or the state of Montana or an agency, instrumentality, or corporation thereof.~~

~~(b) If not sold to the United States or the state of Montana or an agency, instrumentality, or corporation thereof, the bonds must be sold at public sale after notice as provided in 85-7-1437.”~~

Section 26. Section 85-7-1437, MCA, is amended to read:

“85-7-1437. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by 85-7-1436 *for bonds sold publicly* must be published once at least 5 days prior to such sale:

(a) in a newspaper of general circulation in the county in which the office of the issuer is located; and

(b) in a financial newspaper in New York, Chicago, or San Francisco.

(2) If the bond issue is in an amount of less than \$150,000, the bond issue must be advertised at least 5 days prior to sale in a newspaper of general circulation throughout the state of Montana.”

Section 27. Section 85-7-2022, MCA, is amended to read:

“85-7-2022. Sale of bonds. Bonds issued under the provisions of this part ~~shall~~ *must* be issued, negotiated, and sold by or under the direction of the board of commissioners but ~~shall never~~ *may not* be sold for less than ~~90%~~ *97%* of their

par value and accrued interest ~~thereon~~ to the date of delivery. The board may sell ~~said the~~ bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the purposes for which ~~said the~~ bonds were issued.”

Section 28. Section 85-7-2023, MCA, is amended to read:

“85-7-2023. Notice of sale of bonds. Except as provided in 85-7-2033 regarding a private sale, before making any sale, the board shall, by resolution at a meeting, declare its intention to sell a specified amount of the bonds and the day, ~~and~~ hour, and place of the sale. The board shall ~~cause enter~~ the resolution to be entered ~~in~~ into the minutes and provide notice of the sale to be given by publication at least once a week for 3 successive calendar weeks in a newspaper in the county where the office of the board of commissioners is located, and the notice may be published in any other newspaper at the board’s discretion. The notice shall ~~must~~ state that sealed proposals will be received by the board at its office, for the purchase of bonds, until the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds or any portion or portions thereof of the bonds to the highest responsible bidder or bidders. The board may reject any or all bids. ~~In case no~~ If an award is not made, the board may either readvertise the bonds or any part of the bonds for sale or sell the bonds or any part of the bonds at private sale. Coupons evidencing unearned interest must be detached and canceled.”

Section 29. Section 85-7-2033, MCA, is amended to read:

“85-7-2033. Private sale of bonds to certain governmental entities. The district may sell bonds issued under this part to the United States, the state of Montana, or any agency, department, or instrumentality of these governments at private sale by negotiation and without public advertisement or solicitation of bids pursuant to [section 1].”

Section 30. Section 85-8-503, MCA, is amended to read:

“85-8-503. Sale of notes or bonds. Upon execution, the notes or bonds shall ~~must~~ be deposited with the county treasurer, who shall register the same notes or bonds in a book for that purpose, which shall show that documents the number and amount of each note or bond, its date, the date payable and redeemable, where payable, and the person to whom issued. Upon sale of the notes or bonds, the county treasurer shall deliver the same notes or bonds to the person or persons to whom they were sold, upon their the person or persons making payment for the same notes or bonds. ~~Said~~ The notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement, as they may deem it to if it is considered to be in the best interests of the district. ~~Said~~ The notes or bonds shall ~~may~~ not be sold at less than 90% 97% of their face value. ~~Said~~ The notes or bonds shall ~~may~~ not be held to make the commissioners personally liable but shall constitute a lien upon the assessments for the repayment of the principal and interest of such the notes or bonds.”

Section 31. Section 85-9-625, MCA, is amended to read:

“85-9-625. Issuance of bonds — details of sale. (1) If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. *The bonds may be sold at public or private sale as determined by the directors pursuant to [section 1].* After ~~If the directors conduct a public sale, after~~ adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders and may sell at private sale any or all bonds not sold on bids.

(2) The bonds ~~will~~ *must* be sold for a price that is not less than ~~their~~ 97% of par or face value with accrued interest to date of delivery, and all bidders ~~must~~ *shall* state the lowest rate of interest at which they will purchase the bonds at ~~par~~. The board shall reserve the right to reject any and all bids and to sell the ~~said~~ bonds at private sale.”

Section 32. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 5, part 1, and the provisions of Title 17, chapter 5, part 1, apply to [section 1].

Section 33. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 34. Effective date. [This act] is effective on passage and approval.

Section 35. Applicability. [This act] applies to local government actions commencing on or after [the effective date of this act].

Approved April 22, 2011

CHAPTER NO. 254

[HB 541]

AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM REGULATING DOMESTIC LIVESTOCK TRAILING AS A COMMERCIAL ACTIVITY; EXEMPTING DOMESTIC LIVESTOCK TRAILING FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AUTHORIZING DOMESTIC LIVESTOCK TRAILING ACROSS LANDS DESIGNATED AS WILDLIFE MANAGEMENT AREAS; AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Department of Fish, Wildlife, and Parks (MDFWP) is considering whether to deem and classify domestic livestock trailing as a commercial use that is subject to licensing or permitting by the department, the payment of a licensing or permitting fee, and an environmental review under the Montana Environmental Policy Act; and

WHEREAS, MDFWP has adopted administrative rules governing the commercial use of lands under the control, administration, and jurisdiction of the department; and

WHEREAS, livestock grazing, farming, haying, fencing, and timber harvest have been exempted from those rules; and

WHEREAS, given those exemptions for farming and ranching activities, the Legislature believes that domestic livestock trailing should also be exempt; and

WHEREAS, domestic livestock trailing is a necessary component of ranching and farming in Montana; and

WHEREAS, in order to sustain Montana's valuable farm and ranching economy and land bases associated with that economy, farmers and ranchers must be encouraged and have the right to engage in activities that allow them to remain in farming and ranching; and

WHEREAS, MDFWP's attempt to classify domestic livestock trailing as a commercial use and to subject trailing activities to environmental review interferes with the Legislature's directive under Article XII, section 1, of the

Montana Constitution to enact laws that protect, enhance, and develop all agriculture; and

WHEREAS, the Legislature has a strong interest in protecting the health of Montana's agriculture industry.

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

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) *except as provided in 87-1-303(3)*, shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 2. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) *Except as provided in subsection (3), the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.*

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the

operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) *The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.*

(b) *The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:*

(i) *require a fee for domestic livestock trailing or related activities; or*

(ii) *prohibit or unreasonably interfere with domestic livestock trailing activities.*

(4) *For the purposes of this section, the following definitions apply:*

(a) *“Domestic livestock” means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.*

(b) *“Domestic livestock trailing” means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours.”*

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 255

[HB 552]

AN ACT REVISING WORKERS' COMPENSATION LAWS RELATED TO CERTAIN PUBLIC SAFETY VOLUNTEERS; ALLOWING LEVIES USED TO FUND PUBLIC SAFETY VOLUNTEERS' DISABILITY INCOME INSURANCE TO BE USED ALTERNATIVELY FOR WORKERS' COMPENSATION COVERAGE; PROVIDING COVERAGE FOR VOLUNTEER EMERGENCY MEDICAL SERVICE PROVIDERS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-6-621, 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, 7-33-4111, 7-34-102, 39-71-118, AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-6-621, MCA, is amended to read:

“7-6-621. Volunteer firefighters’ disability income insurance authorized — voted levy — fund. (1) Disability income insurance, as defined in 33-1-235, purchased for volunteer firefighters must provide that:

(a) payments or benefits are paid only for an injury received as a volunteer firefighter; and

(b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating physician determines that the beneficiary is no longer disabled.

(2) If the voters have approved a levy for the purchase of volunteer firefighters’ disability income insurance *or workers’ compensation coverage*, the governing body of a local government entity may establish a volunteer firefighters’ disability income insurance account. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(3) Money may be expended from the account to purchase disability income insurance coverage meeting the provisions of subsection (1) *or for workers’ compensation coverage* for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

(4) Money in the account must be invested as provided by law. Interest and income from the investment of money in the account must be credited to the account.”

Section 2. Section 7-33-2109, MCA, is amended to read:

“7-33-2109. Tax levy, debt incurrence, and bonds authorized — voted levy for volunteer firefighters’ disability income *or workers’ compensation coverage*. (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property within a rural fire district for the purpose of purchasing disability income insurance coverage *or workers’ compensation coverage* for the volunteer firefighters of the district as provided in 7-6-621.

(3) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(1)(d), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

(4) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

(5) The amount of debt incurred pursuant to subsection (3) and the amount of bonds issued pursuant to subsection (4) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(6) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22.”

Section 3. Section 7-33-2209, MCA, is amended to read:

“7-33-2209. Finance of fire control activities — voted levy for volunteer firefighters’ disability income insurance or workers’ compensation coverage. (1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax for the purposes of subsection (1).

(3) Subject to 15-10-425, the county governing body may levy a tax for the purpose of purchasing disability income insurance coverage *or workers’ compensation coverage* for volunteer firefighters of volunteer rural fire control crews and county volunteer fire companies as provided in 7-6-621.”

Section 4. Section 7-33-2403, MCA, is amended to read:

“7-33-2403. Operation of fire service area — voted levy for volunteer firefighters’ disability income insurance or workers’ compensation coverage. (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to govern and manage the affairs of the area; or

(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for election of rural fire district trustees in 7-33-2106.

(2) Subject to 15-10-425, the commissioners may levy a tax upon all property within the county for the purpose of buying disability income insurance coverage *or workers’ compensation coverage* for volunteer firefighters deployed within the fire service area as provided in 7-6-621.

(3) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 apply and 7-33-2106 applies whether the trustees are elected or appointed, except that the trustees shall prepare annual budgets and request a schedule of rates for the budget.”

Section 5. Section 7-33-4109, MCA, is amended to read:

“7-33-4109. Supplementary volunteer fire department authorized for cities of second class — voted levy for volunteer firefighters’ disability income insurance or workers’ compensation coverage. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department is exempted from compliance with 7-33-4128 to the extent that section applies to the volunteer fire department by way of penalties and infringements.

(3) A volunteer is an enrolled member of the volunteer fire department, assists the paid fire department, and is eligible to serve only on the board of trustees of the fire department relief association of the city. However, not more than three volunteer members may be on the board of trustees. A person who is a volunteer for the purposes of this section is not entitled to receive a service pension.

(4) The governing body of the city may:

(a) pay an enrolled volunteer firefighter a minimum of \$1 for attending a fire and a minimum of \$1 for each hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper place;

(b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying disability income insurance coverage *or workers' compensation coverage* for the volunteer firefighters of the volunteer fire department as provided in 7-6-621.

(5) In attending fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department."

Section 6. Section 7-33-4111, MCA, is amended to read:

"7-33-4111. Tax levy for volunteer fire departments — voted levy for volunteer firefighters' disability income insurance *or workers' compensation coverage*. (1) For the purpose of supporting volunteer fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to other levies permitted by law, a tax on the taxable value of all taxable property in the city or town.

(2) Subject to 15-10-425, a city or town may levy a tax on the taxable value of all taxable property in the city or town for the purpose of purchasing disability income insurance coverage *or workers' compensation coverage* for volunteer firefighters of volunteer fire departments as provided in 7-6-621."

Section 7. Section 7-34-102, MCA, is amended to read:

"7-34-102. Ambulance service mill levy permitted. Subject to 15-10-420 and in addition to all other levies authorized by law, each county, city, or town may levy an annual tax on the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service. *These costs may include workers' compensation coverage for emergency medical technicians on volunteer duty with the ambulance service or members of a paid or volunteer nontransporting medical unit defined in 50-6-302.*"

Section 8. Section 39-71-118, MCA, is amended to read:

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

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations,

except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

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

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

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

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

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

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

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

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

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

coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

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

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

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

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

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

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

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

(b) *A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, an ambulance service not otherwise covered by subsection (1)(g), or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer firefighter or a volunteer emergency medical technician.*

(4) (a) *The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.*

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

(b)(c) The term "volunteer hours" means all the time spent by a volunteer firefighter or a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

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

proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

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

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

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

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

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ (6)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

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

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

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium ~~and weekly benefit and weekly benefit~~ purposes based on the number of volunteer hours of each firefighter, *but no more than 60 hours*, times the state's average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

~~(e) A (c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described~~

~~in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed but who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope of employment as a volunteer firefighter may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.~~

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

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

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

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

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

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

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

(i) nonresident employees are hired in Montana;

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

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

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

(12) *(a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit.*

(b) *In the event of an election under subsection (12)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.*

(c) *A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (12)(a), and when injured in the course and scope of employment as a volunteer emergency medical technician may in addition to the benefits described in subsection (12)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If an election is made as provided in subsection (12)(a), payrolls must be reported and premiums must be assessed on the assumed weekly wage.*

(d) *A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter."*

Section 9. Section 39-71-123, MCA, is amended to read:

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

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

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

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

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

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

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

(b) Except as provided in ~~39-71-118(7)(e)~~ 39-71-118(7)(c) and (12)(c), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

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

Section 10. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 256

[HB 602]

AN ACT ESTABLISHING A PROCESS FOR THE LEGISLATURE TO PROVIDE DIRECTION FOR THE IMPLEMENTATION OF EXEMPT WELL LAWS; REQUIRING AN INTERIM STUDY OF ISSUES RELATED TO

GROUND WATER WELLS EXEMPT FROM PERMITTING; TEMPORARILY PROHIBITING RULEMAKING FOR WELLS EXEMPT FROM PERMITTING; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Legislative findings. The legislature finds that:

- (1) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;
- (2) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;
- (3) the right to the use of water through a water right is a recognized property right;
- (4) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;
- (5) the Water Use Act requires the department of natural resources and conservation to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and
- (6) the Water Use Act does not provide the department of natural resources and conservation with clear direction on the administration of ground water wells exempt from permitting.

Section 2. Interim study. (1) The water policy interim committee, provided for in 5-5-231, shall conduct a study of:

- (a) wells that are exempt from permitting pursuant to 85-2-306, including:
 - (i) determining the number of existing exempt wells and estimating the number of ground water wells that may be exempted from permitting over the next decade under current laws and regulations;
 - (ii) summarizing the types of beneficial uses to which water from exempt wells is applied;
 - (iii) analyzing the amount of water reasonably necessary for the various beneficial uses served by exempt wells compared to the current statutory limits for flow rate and volume;
 - (iv) exploring options to provide accurate measurement of water appropriated via exempt wells;
 - (v) examining enforcement options for exempt wells to ensure that they do not exceed statutory limits or disrupt the priority system for water right administration governed by the Water Use Act and the Montana constitution;
 - (vi) examining applicable research and analysis conducted by the ground water investigation program at the Montana bureau of mines and geology provided for in 85-2-525;
 - (vii) examining the historical treatment of exempt wells and the evolution of laws and rules governing exempt wells;
 - (viii) analyzing how the water appropriated by exempt wells may affect surface water appropriations, including existing claims, permits, certificates, and reservations; and
 - (ix) examining the legal options for integrating exempt wells into the principle that first in time is first in right when senior water rights are not fulfilled;

(b) the statutes, rules, programs, and policies employed by other prior appropriation states for exempt wells, including legal challenges;

(c) the adequacy of existing programs and tools for managing and mitigating the development of wells that would otherwise be exempt from permitting, including but not limited to controlled ground water areas created pursuant to Title 85, chapter 2, part 5, water mitigation banks, community water system incentives, and in-lieu-of-fee programs;

(d) the relationship between exempt wells and land use decisions, including the relationship between exempt wells and individual septic systems, the cost comparison of installing public water systems or extending existing water infrastructure, and the role of local governments in requiring alternatives to exempt wells; and

(e) the rulemaking authority of the department of natural resources and conservation in relation to the statutory policy and purpose provided for in 85-2-101.

(2) The committee shall prepare a report to submit to the 63rd legislature that provides clear policy direction and necessary legislation to guide Montana's policy regarding wells that may be exempt from the permitting process.

Section 3. Limit on rulemaking authority. (1) Except as provided in subsection (2), the department of natural resources and conservation may not adopt rules to implement the provisions of 85-2-306(3) for ground water wells that are exempt from permitting until October 1, 2012.

(2) The department may adopt rules to implement amendments to 85-2-306(3) that were passed and approved by the 62nd legislature for:

(a) appropriations by a local governmental fire agency organized under Title 7, chapter 33, provided that the appropriation is used only for emergency fire protection; or

(b) nonconsumptive appropriations for geothermal heating or cooling exchange applications.

Section 4. Appropriation. (1) There is appropriated \$15,000 from the general fund for the biennium beginning July 1, 2011, to the water policy interim committee for the purpose of completing the study required pursuant to [section 2].

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] is effective July 1, 2011.

Section 6. Termination. [This act] terminates June 30, 2013.

Approved April 21, 2011

CHAPTER NO. 257

[SB 30]

AN ACT REVISING THE COLLECTION REQUIREMENTS UNDER THE STATE SUPERFUND LAWS; REQUIRING LIABLE PARTIES TO PAY INTEREST IF MONTHLY BILLS FOR REMEDIAL ACTION COSTS ARE NOT PAID WITHIN 30 DAYS; AMENDING SECTION 75-10-722, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 75-10-722, MCA, is amended to read:

“75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state’s remedial action costs.

(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount of the state’s remedial action costs, including interest and, if applicable, penalties under 75-10-715(3).

(3) If the state’s remedial action costs and penalties are not paid by the liable person to the department ~~within 60 days~~ after receipt of notice that the costs and penalties are due, the department shall *may* bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) If the department provides a notice that the state’s remedial action costs are due, the department shall assess and collect interest on the unpaid amount at the rate provided for in 25-9-205:

(a) *after 30 days of receipt of the notice if the notice covers costs incurred during a time period that is 1 month or less;*

~~(a)~~(b) *after 60 days of receipt of the notice if the notice covers costs incurred during a time period that is one-quarter of a year more than 1 month and not more than 3 months or less;*

~~(b)~~(c) *after 90 days of receipt of the notice if the notice covers costs incurred during a time period that is more than one-quarter of a year 3 months and less than or equal to one-half of a year not more than 6 months; and*

~~(c)~~(d) *after 120 days of receipt of the notice if the notice covers costs incurred during a time period that is more than one-half of a year 6 months.*

(5) An action to recover remedial action costs and interest may be brought under this section at any time after any remedial action costs and interest have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs and interest that is binding on any subsequent action or actions to recover further remedial action costs and interest. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. The court may disallow the associated interest if it determines, based on the record, that the liable person can show that the costs are not reasonable.

(6) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.

(7) Remedial action costs, interest, and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.”

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 258

[SB 124]

AN ACT REORGANIZING AND RECODIFYING FISH AND GAME CODE CRIMINAL STATUTES AND DEFINITIONS; CLARIFYING PENALTIES; AMENDING SECTIONS 45-6-101, 45-6-203, 81-2-121, 87-1-120, 87-1-232, 87-1-234, 87-1-601, 87-1-803, 87-1-804, 87-2-101, 87-2-104, 87-2-106, 87-2-202, 87-2-411, 87-2-521, 87-2-807, 87-3-110, 87-3-121, 87-3-126, 87-3-204, 87-3-221, 87-3-222, 87-3-224, 87-3-403, 87-4-201, 87-4-306, 87-4-407, 87-4-427, 87-4-601,

87-4-609, 87-4-803, 87-4-807, 87-4-903, 87-4-915, 87-4-1002, 87-5-204, 87-5-703, AND 87-5-721, MCA; AND REPEALING SECTIONS 87-1-102, 87-1-108, 87-1-109, 87-1-110, 87-1-111, 87-1-112, 87-1-113, 87-1-114, 87-1-115, 87-1-121, 87-1-125, 87-1-208, 87-1-231, 87-2-103, 87-2-109, 87-2-110, 87-2-112, 87-2-114, 87-2-120, 87-2-203, 87-2-205, 87-2-509, 87-2-604, 87-2-804, 87-3-101, 87-3-102, 87-3-103, 87-3-104, 87-3-105, 87-3-107, 87-3-108, 87-3-109, 87-3-111, 87-3-112, 87-3-116, 87-3-117, 87-3-118, 87-3-123, 87-3-124, 87-3-125, 87-3-130, 87-3-134, 87-3-135, 87-3-141, 87-3-142, 87-3-143, 87-3-144, 87-3-205, 87-3-206, 87-3-207, 87-3-209, 87-3-301, 87-3-302, 87-3-304, 87-3-305, 87-3-306, 87-3-307, 87-3-401, 87-3-402, 87-3-404, 87-3-405, 87-3-501, 87-3-503, 87-3-504, 87-3-505, 87-3-506, 87-3-507, 87-4-608, AND 87-4-1014, MCA.

WHEREAS, the 2007 Legislature passed House Joint Resolution No. 16, urging that revision of the criminal codes within Title 87 of the Montana Code Annotated be given priority; and

WHEREAS, House Joint Resolution No. 16 noted that practitioners, judges, and citizens find that the criminal codes intertwined within the fish and game laws in Title 87 are difficult to read, understand, and prosecute; and

WHEREAS, House Joint Resolution No. 16 directed that revision of the Title 87 criminal code should not include policy changes to current laws and should adhere to the intent of the legislatures that crafted the laws; and

WHEREAS, in 2008, the Director of Fish, Wildlife, and Parks appointed a Title 87 criminal code revision working group, consisting of Justices of the Peace, County Attorneys, an Assistant Attorney General, legal counsel and the enforcement administrator of the Department of Fish, Wildlife, and Parks, and legislative staff; and

WHEREAS, the working group met numerous times and spent countless hours crafting a revision that makes the Title 87 criminal code more understandable without making substantive or policy changes to present law; and

WHEREAS, revision of the fish and game criminal statutes will benefit the hunting and fishing public, magistrates, and prosecutors by codifying crimes and penalties in a separate chapter of Montana law, rather than being intertwined throughout Title 87.

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

Section 1. Definitions. Unless the context requires otherwise, in [sections 1 through 80], the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

- (i) decoys, silhouettes, or other replicas of wildlife body forms;
- (ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(4) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(5) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(6) "Field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(7) "Fishing" means to take fish or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(8) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(9) "Fur farm" means enclosed land upon which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(10) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

(11) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(12) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus Pomoxis (crappie); and the species *Ictalurus punctatus* (channel catfish).

(13) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(14) "Knowingly" has the meaning provided in 45-2-101.

(15) "Livestock" includes ostriches, rheas, and emus.

(16) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(17) "Negligently" has the meaning provided in 45-2-101.

(18) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(19) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(20) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(21) "Person" means an individual, association, partnership, and corporation.

(22) "Predatory animal" means coyote, weasel, skunk, and civet cat.

(23) "Purposely" has the meaning provided in 45-2-101.

(24) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(25) "Resident" has the meaning provided in 87-2-102.

(26) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(27) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barter, or exchanges an interest either in game or fish for an article or thing of value.

(28) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

(29) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(30) "Trap" means to take or participate in the taking of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(31) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(32) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(33) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

(34) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(35) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing.

Section 2. Designation of violations. A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor unless a felony is expressly provided by law.

Section 3. Fish and game violation as inchoate offense. Any violation of this title is an offense for purposes of the crimes of attempt, solicitation, and conspiracy set out in Title 45, chapter 4.

Section 4. Fish and game code not to supersede criminal code — statute of limitations. (1) The penalty provisions of this title are intended to supplement but not supersede the provisions of Title 45. Nothing in this title limits the prosecution of any conduct defined as an offense in Title 45.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of any offense under this title are those time limitations specified in 45-1-205.

Section 5. Penalties in addition to Title 37. Notwithstanding the provision of this chapter, the penalties provided by this chapter are in addition to any penalties provided in Title 37, chapter 47.

Section 6. Lawful taking to protect livestock or person. (1) [Sections 1 through 80] may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock. However, for purposes of protecting livestock, a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing livestock.

(2) A person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.

(3) A person who, under this section, takes wildlife protected by this title shall notify the department within 72 hours and shall surrender or arrange to surrender the wildlife to the department.

Section 7. Violation of commission or department order or rule. A person who purposely, knowingly, or negligently violates an order or rule of the commission or department shall be fined not less than \$50 or more than \$500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 8. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal. (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of

a hide, head, or mount of a grizzly bear is prohibited, except as provided in [section 13];

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) paddlefish roe as caviar under the provisions of 87-4-601; or

(e) captive-reared migratory waterfowl.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$300 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, the person shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in [section 63].

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 9. Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt. (1) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, labeling, or packaging a fur-bearing

animal or the pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(2) A person convicted of unlawful taking of more than double the legal bag limit of a fur-bearing animal may be subject to the additional penalties provided in [sections 63 and 64].

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 10. Hunting or fishing during closed season. (1) A person may not hunt or attempt to hunt:

(a) any game animal or game bird or fish for or catch any fish during the closed season on any species of game animal, game bird, or fish; or

(b) an upland game bird until the commission provides an open season on that upland game bird. The open season on mourning doves is restricted to the open season on upland game birds.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting during a closed season may be subject to the additional penalties provided in [sections 63 and 64].

Section 11. Waste of game animal, game bird, or game fish. (1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food.

(3) A person responsible for the death of a mountain lion or wolf, except as provided in [section 6], may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to 87-3-110.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than \$50 or more than \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in [section 63].

Section 12. Unlawful sale of game fish, bird, game animal, or fur-bearing animal. (1) A person may not purposely or knowingly sell, purchase, or exchange all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit the:

(a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in [section 13];

(b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court.

(5) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, then the

person shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(6) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

Section 13. Unlawful sale of grizzly bear. (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount of a grizzly bear may not sell it if it has not been registered with the department pursuant to 87-3-110.

(2) A person convicted of a violation of this section shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

Section 14. Unlawful use of aircraft or boat. (1) Except as provided in 87-3-126, a person may not:

(a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft, including a helicopter;

(b) use an aircraft or helicopter for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game bird, migratory bird, game animal, or fur-bearing animal; or

(c) if in an aircraft, including a helicopter, spot or locate any game animal or fur-bearing animal and communicate the location of the game animal or fur-bearing animal to any person on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife.

(2) Unless permitted by the department, a person may not use an aircraft, including a helicopter, for hunting purposes within the boundaries of a national forest except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:

(a) during emergency situations;

(b) when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(3) A person may not use a powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game bird, game animal, or fur-bearing animal.

(4) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (4), a person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be

imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of aircraft or boat to kill or take a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of aircraft or boat to kill or take a deer, antelope, elk, or mountain lion, the person shall be fined not less than \$300 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful use of aircraft or boat to kill or take a fur-bearing animal, the person shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

Section 15. Unlawful contest or prize. (1)(a) Except as provided in subsections (1)(b) and (1)(c), a person, firm, or club may not offer or give a prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, or fur-bearing animal or any bird or animal protected by law.

(b) A prize may be awarded for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.

(c) A person may conduct or sponsor a contest for which the monetary prize, certificate, or award does not exceed \$50 for a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, or having the longest body or any similar contest based upon the size or weight of a game animal or part of a game animal. The monetary restriction provided in this subsection (1)(c) does not apply to recognition given by a nationally established and recognized Boone and Crockett trophy institute.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 16. Harassment. (1) (a) A person may not:

(i) intentionally interfere with the lawful taking of a wild animal or fishing by another;

(ii) with intent to prevent or hinder its lawful taking or its capture, disturb a wild animal or engage in an activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal; or

(iii) disturb an individual engaged in the lawful taking of a wild animal or fishing with intent to prevent the taking of the animal or the capture of the fish.

(b) This subsection (1) does not:

(i) prohibit a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment; or

(ii) prohibit or curtail normal landowner operations or lawful uses of water.

(2) A person convicted of a violation of this section shall be fined not more than \$500 or be imprisoned for not more than 30 days, or both. A person convicted of a second or subsequent violation shall be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both.

(3) A court of general jurisdiction may enjoin conduct in violation of this section upon petition by a person affected or who reasonably may be affected by that conduct and upon a showing that the conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(4) As used in this section:

(a) "fishing" means the lawful means of fishing as described in [section 45];

(b) "taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal; and

(c) "wild animal" means a game animal, migratory game bird, upland game bird, fur-bearing animal, predatory animal, or fish.

Section 17. Unlawful supplemental feeding. (1) A person may not provide supplemental feed attractants to game animals by:

(a) purposely or knowingly attracting any cloven-hoofed ungulates, bears, or mountain lions with supplemental feed attractants;

(b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing any cloven-hoofed ungulates, bears, or mountain lions access to the supplemental feed attractants; or

(c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.

(2) A person is not subject to civil or criminal liability under this section if the person is engaged in:

(a) the normal feeding of livestock;

(b) a normal agricultural practice;

(c) cultivation of a lawn or garden;

(d) the commercial processing of garbage; or

(e) recreational feeding of birds unless, after having received a previous warning by the department, the person continues to feed birds in a manner that attracts cloven-hoofed ungulates or bears and that may contribute to the transmission of disease or constitute a threat to public safety.

(3) This section does not apply to supplemental feeding activities conducted by the department for disease control purposes.

(4) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 18. Shooting at simulated wildlife. (1) A person may not discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) A person convicted of a violation of this section is subject to the same penalty as prescribed for the state statute or commission rule violated during the attempted hunting of the actual wildlife being simulated. In addition, the person shall pay restitution of \$50 to the department for the repair of damages to simulated wildlife decoys.

Section 19. Checking station offenses. (1) A person, upon the request of the director, the director's authorized representative, or any game warden, shall produce for inspection any current fish and game license that has been issued to the person and any game animals, birds, fish, or fur-bearing animals in the person's possession. Hunters or anglers entering or leaving areas for which checking stations have been established shall stop and report if a checking station is on the hunter's or angler's route of travel to or from the hunting or fishing area and personnel are on duty.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 20. Unlawful relocation of fish. (1) A person or firm may not:

(a) place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by department regulation;

(b) without written department approval, move live or dead salmonid fish or eggs from one in-state location to another when the fish or eggs are known to be infected with fish pathogens specified by the department as posing a threat to fisheries;

(c) import live salmonid fish or eggs into Montana without meeting the requirements of 87-3-221; or

(d) discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems pursuant to 87-3-222(2).

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or

trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 21. Field trial offenses. (1) A person may not conduct a field trial unless the person has a permit under 87-4-915.

(2) An applicant receiving a permit to conduct a field trial may not violate or authorize violation of any of the terms of the permit.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 22. Hunting, fishing, or trapping without license. (1) Except as provided in subsection (2), a person may not:

(a) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds except as provided by law or as provided by the department;

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish, except at the places and during the periods and in the manner established by law or as prescribed by the department;

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so;

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident; or

(e) hunt migratory game birds without first having obtained a valid migratory game bird license from the department if the person is 16 years of age or older.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted of hunting without a license may be subject to the additional penalties provided in [sections 63 and 64].

(5) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 23. Unlawful procurement of license, permit, or tag. (1) A person may not:

(a) subscribe to or make any materially false statement on an application or license. Any material false statement contained in an application renders the license issued pursuant to it void.

(b) purchase a hunting, fishing, or trapping license without first having obtained a wildlife conservation license pursuant to 87-2-201; or

(c) purposely or knowingly assist an unqualified applicant in obtaining a resident license.

(2) A license agent may not sell any hunting, fishing, or trapping license to:

(a) an applicant who fails to produce the required identification at the time of application for licensure pursuant to 87-2-106(1) and 87-2-202(1); or

(b) a person who does not present the person's wildlife conservation license at the time of application for the licenses.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 24. Nonresident license or permit offenses. (1) A person who is not a resident may not:

(a) apply for or purchase for a nonresident's use the following resident licenses and permits:

(i) wildlife conservation license;

(ii) hunting license or permit; or

(iii) fishing license or permit;

(b) affirm to or make a false statement to obtain a resident license.

(2) A person convicted of a violation of this section shall be fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000 or be imprisoned in the county jail for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 18 months.

Section 25. License, permit, or tag offenses. (1) A person may not apply for, purchase, or possess more than one license, permit, or tag of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under 87-2-104(2) for game management purposes. However, when more than one license, permit, or tag is authorized by the commission, a person may not apply for, purchase, or possess more licenses, permits, or tags than are authorized.

(2) The holder of a replacement license, permit, or tag may not make the replacement license, permit, or tag available for use by another person.

(3) Except as provided in [section 26(2)], a person to whom a license or permit has been issued may not fish, hunt for any game bird or game animal, or attempt to hunt for any fur-bearing animal in this state unless the person is carrying the required license or permit at the time.

(4) A person may not refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it.

(5) A person may not at any time alter or change a license in any material manner or loan or transfer any license to another person. A person other than the person to whom a license is issued may not use the license. A person may not attach the person's license to a game animal killed by another person.

(6) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 26. Unlawful possession of hunting or fishing license or permit. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The prohibition in subsection (1) does not apply:

(a) to a person who is carrying or has physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person; and

(b) when a properly obtained and validated license or permit is attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule is guilty of a felony and upon conviction shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and lose the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

Section 27. Hunting, fishing, or trapping while privileges or licenses forfeited or suspended. (1) A person may not hunt, fish, or trap

while the person's license or privilege to hunt, fish, or trap in this state is forfeited for a violation of this title or any other law pertaining to fish and game in this state. A person convicted of a violation of this section may be fined not less than \$500 or more than \$2,000 and shall be imprisoned in the county detention center for not less than 5 days or more than 6 months.

(2) A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, may not hunt, fish, or trap in this state while that privilege is suspended. A person convicted of a violation of this section shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 28. Unlawful procurement of license while privileges forfeited or suspended. (1) A person whose privilege to hunt, fish, or trap in this state is forfeited for a conviction or forfeiture of bail or bond for a violation under [sections 1 through 80] in this state may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit while that privilege is forfeited.

(2) A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, may not apply for or purchase any license to hunt, fish, or trap in this state while that privilege is suspended.

(3) A person convicted of a violation of this section shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 29. Failure to surrender license for violation in participating state. A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, and who refuses to surrender any current hunting, fishing, or trapping license as required shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 30. Offense of noncompliance in Montana. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of [section 76] shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 31. Offense of noncompliance in participating state. A person who hunts, fishes, or traps, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, fishing, or trapping license in violation of 87-1-804 shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 32. Unlawful special application or entry. A person convicted of unlawfully applying for or entering a drawing for any special license or permit in violation of [section 75] shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 60 days, or both.

Section 33. Unlawful use of equipment while hunting. (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife except predatory animals and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person's possession any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm;

(d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in [sections 63 and 64].

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 34. Unlawful hunting within city or town. (1) A person may not hunt or attempt to hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state except as allowed under a plan developed by a city or town and approved by the department pursuant to 7-3-1105, 7-3-1222, or 7-31-4110.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or

trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 35. Unlawful hunting from public highway. (1) Except as provided in 87-2-803(4), a person may not hunt or attempt to hunt any game animal or game bird on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 36. Unlawful use of dog while hunting. (1) Except as provided in subsections (3) through (5), a person may not:

(a) chase any game animal or fur-bearing animal with a dog; or

(b) purposely, knowingly, or negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal. If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) Except as provided in subsection (3)(d), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs; and

(d) use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (2).

(4) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.

(5) Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(6) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not

more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(7) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 37. Unlawful use of vehicle while hunting. (1) Except as provided in 87-2-803(4), a person may not:

(a) hunt or attempt to hunt any game animal or game bird from any self-propelled or drawn vehicle; or

(b) use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state. This subsection (1)(b) does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) Except as provided in 87-2-803(4), a person may not, while hunting a game animal or bird:

(a) drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass a game animal or game bird with the use or aid of a motor-driven vehicle;

(b) use a motor-driven vehicle other than on an established road or trail unless the person has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case, a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted permission. After the retrieval, the motor-driven vehicle must be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

(c) drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail, unless written permission has been given by the landowner and is in possession of the hunter.

(3) The restrictions in subsection (2) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land and not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(4) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(5) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 38. Unlawful destruction of evidence of sex. (1) A person who kills a big game animal in this state may not destroy evidence of the sex of the big game animal so as to make the determination of the sex of the big game animal uncertain.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 39. Migratory game bird offenses. A person who violates any provision of 87-3-403 related to migratory game birds shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 40. Tagging of game animal offenses. (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags, coupons, or markers as the department prescribes. When a person kills a game animal under the license, the person shall immediately cut out from the tag, coupon, or other marker the date the animal was killed and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, the license holder's address, and any other information requested on the tag, coupon, or other marker. The tag, coupon, or other marker must be kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed. When a game animal has been lawfully killed and the proper tag, coupon, or other marker is attached to the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(2) A person who kills any game animal by authority of any license issued for the killing of the game animal may not fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued to the carcass of the game animal or portion of the game animal.

(3) A person may not fail to keep the tag, coupon, or other marker attached to the game animal or portion of the game animal while the animal is possessed by the person.

(4) A person may not tag a game animal with a tag restricted to a hunting district other than the hunting district where the game animal was killed.

(5) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 41. Tagging of turkey offenses. (1) A person who kills, captures, or possesses a wild turkey by authority of any turkey tag or permit may not:

(a) fail or neglect to attach the tag to the turkey;

(b) fail to validate the tag by not filling out or punch marking the tag as required; or

(c) fail to keep the tag attached while the turkey is possessed by the person.

(2) A person who takes or kills a turkey must immediately attach to the turkey's leg a valid tag in compliance with instructions on the tag.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 42. Hunting or killing over limit. (1) A person may not attempt to kill, take, shoot, or capture or kill, take, hunt, shoot, or capture more than one game animal of any one species in any 1 license year unless the killing of more than one game animal of that species has been authorized by regulations of the department.

(2) If a person is convicted or forfeits bond or bail after being charged with hunting or killing over the limit of:

(a) mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(b) deer, antelope, elk, or mountain lion, the person shall be fined not less than \$300 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) fur-bearing animal, the person shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(3) A person convicted of unlawful taking of more than double the legal bag limit as described in this section may be subject to the additional penalties provided in [sections 63 and 64].

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 43. Failure to wear hunter orange while big game hunting.

(1) Except as provided in subsection (3), a person may not hunt any big game animals in this state or accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) As used in this section, "hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to a person hunting with a bow and arrow during the special archery season.

(4) The department shall make rules to implement this section.

(5) A person convicted of a violation of this section shall be punished by a fine of not less than \$10 or more than \$20.

Section 44. Failure to obtain landowner's permission for hunting.

(1) A resident or nonresident shall obtain permission of the landowner, the lessee, or their agents before taking or attempting to take nongame wildlife or predatory animals or hunting on private property.

(2) Except as provided in subsection (3), a person who violates this section shall, upon conviction for a first offense, be fined an amount not to exceed \$25.

(3) A person convicted of a violation of this section for hunting a big game animal on private property without obtaining permission of the landowner shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 45. Fishing offenses. (1) Except when specifically authorized by law or by commission rule, a person may not:

(a) fish by any means other than by hook and single line or single rod, in hand or within immediate control. This does not prevent:

(i) fishing from a boat or the shore on a lake or reservoir by hook and two lines or two rods, in hand or within immediate control, in accordance with rules that the commission adopts;

(ii) the snagging of paddlefish, chinook salmon, and kokanee (sockeye salmon) when the commission declares an open season when paddlefish, chinook salmon, and kokanee (sockeye salmon) may be taken by snagging;

(iii) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow under rules and regulations that the commission adopts;

(iv) the use of landing net or gaff to land a game fish after the game fish has been hooked as specified in this subsection (1)(a);

(v) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in waters designated by the commission;

(vi) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River under the rules and regulations that the commission adopts;

(vii) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod; or

(viii) the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March under rules and regulations that the commission adopts.

(b) unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork;

(c) take or catch fish using fishtraps, grabhooks, spears, gigs, or other similar means for catching fish;

(d) use any gun or trap or other device to entrap, catch, capture, or take or to attempt to entrap, catch, capture, or take any game fish;

(e) have in the person's possession or under the person's control a seine, net, or other similar device for capturing fish. A seine or net found in a vehicle, at the camp, or on the premises of a person is prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying the camp or premises. This subsection (1)(e) does not apply to:

(i) a license holder for a private fish pond who is licensed to sell fish and eggs under 87-4-603;

(ii) a person with an unexpired seine or net license;

(iii) the use, by any person, of a landing net in connection with or in addition to a pole, line, and hooks in fishing for game fish; or

(iv) the possession of traps, seines, or nets when found in the vicinity of any waters in which the commission has designated that traps, seines, or nets may be used for the taking of nongame fish or game fish.

(f) take or catch fish with a hook baited with any poisonous substance or using any poisonous substance, including fish berries;

(g) use archery equipment prohibited by rule of the commission to fish; or

(h) use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison or other deleterious substance or have any of the enumerated items in the person's possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish. This subsection (1)(h) does not apply to anyone authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

(2) The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession these implements are found were using the implements to fish.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 46. Trapping and snaring offenses. (1) A person may not use a snare trap for the purpose of snaring a fur-bearing animal, a predatory animal, or a nongame species unless:

(a) the snare trap is tagged with a numbered metal device identifying the owner's name, address, and telephone number;

(b) the consent of the landowner has been obtained for a set on private property; and

(c) the snare trap is set in a manner and at a time so that it will not unduly endanger livestock. A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person trapping fur-bearing animals, predatory animals, or any other animals shall fasten a metal tag to all traps bearing in legible English the name and address or wildlife conservation license number of the trapper, except that a tag is not required on traps used by landowners trapping on their own land or on an irrigation ditch right-of-way contiguous to the land.

(3) A holder of a Class C-2 trapper's license may not trap or snare predatory animals or nongame wildlife on private property without obtaining written permission from the landowner, the lessee, or their agents.

(4) A person may not at any time willfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver, except that trapping in the house of muskrats is not prohibited when authorized by the commission.

(5) (a) A person may not destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by the person if the snare would endanger livestock.

(b) This subsection (5) does not apply to a law enforcement officer acting within the scope of the officer's duty.

(6) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(7) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 47. Trapping during closed season. (1) A person may not trap or hunt or attempt to trap or hunt any fur-bearing animal until the commission provides an open season on any fur-bearing animal. The furs and hides of fur-bearing animals legally taken during the open season may be possessed, bought, and sold at any time except as provided by law.

(2) When it is shown that muskrats or beaver are causing severe injury to or are a menace to the structures, canal banks, or other works of an irrigation project or district or to a stock water pond, any employee or resident landowner on the project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of the project or district or the stock water pond during the closed season on muskrats or beaver after having secured from the director a permit to do so, except that from June 1 to August 31 of each year, a permit is not required.

(3) A person convicted of a violation of this section shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 48. Waste of fur-bearing animal. (1) A person may not waste a fur-bearing animal by purposely or knowingly:

(a) failing to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attending traps or snares so that fur-bearing animals are wasted; or

(c) wasting the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) The following are exempt from this section:

(a) federal, state, and county predator control programs; and

(b) pelts of muskrat and beaver killed pursuant to [section 47(2)].

(4) As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal.

(5) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 49. Failure to report or tattoo. (1) Any bear, wolf, tiger, mountain lion, or coyote that is captured alive to be released later or that is held in captivity for any purpose must be reported to the department within 3 days of the capture or commencement of captivity.

(2) Each animal reported as required in subsection (1) must be permanently tattooed or otherwise permanently identified in a manner that will provide positive individual identification of the animal. No tattoo is required if the animal is subject to a permanent, individual identification process by another state or federal agency.

(3) Any person holding a bear, wolf, tiger, mountain lion, or coyote in captivity shall immediately report to the department any death, escape, release, transfer of custody, or other disposition of the animal.

(4) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 50. Outfitting without a license. (1) (a) A person may not purposely or knowingly engage in outfitting while not licensed pursuant to Title 37, chapter 47, or purposely or knowingly violate a licensing rule adopted under Title 37, chapter 47.

(b) A person convicted of a violation of subsection (1)(a) is punishable by a fine of not less than \$200 or more than \$1,000 or imprisonment in the county jail for up to 1 year, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(2) (a) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as described in subsection (1)(a), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of \$5,000 is punishable by a fine of not more than \$50,000 or imprisonment in the state prison for up to 5 years, or both.

(b) A person convicted of a violation of subsection (2)(a) shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a minimum of 5 years. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(3) A sentencing court that imposes a period of license revocation pursuant to subsection (1)(b) or (2)(b) shall consider and may impose any of the following conditions during the period of revocation:

(a) prohibiting the offender from:

(i) participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) purchasing or possessing any hunting, fishing, or trapping permits; and

(b) imposing any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of a violation of this section shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, the following definitions apply:

(a) "Consideration" means remuneration given in exchange for outfitting services supplied based on a business relationship between parties, but not including reimbursement for shared trip expenses.

(b) (i) "Outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide or professional guide in accompanying that person.

(ii) The term does not include the provision of the services listed in subsection (5)(b)(i) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests.

Section 51. Taxidermist offenses. (1) A person convicted of a violation of 87-4-201 related to the licensing and recordkeeping of taxidermists shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) In addition to the penalties in subsection (1), the taxidermist's license of the person convicted may be revoked by the court.

Section 52. Fur dealer offenses. A person convicted of a violation of 87-4-302 or 87-4-303 related to the licensing and recordkeeping of a fur dealer shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 53. Alternative livestock ranch offenses. (1) A person may not purposely or knowingly violate any provision of or rule adopted pursuant to Title 87, chapter 4, part 4, pertaining to the licensure or operation of an alternative livestock ranch.

(2) In addition to license revocation or other penalties allowed by 87-4-427, a person who purposely or knowingly violates this section shall be fined not more than \$1,000 or be imprisoned in the county jail for not more than 1 year, or both.

(3) Any violation of [section 12] regarding the sale of an animal in connection with an alternative livestock ranch is subject to prosecution and penalties under that section.

Section 54. Shooting preserve offenses. (1) A person may not:

(a) hunt on a shooting preserve without obtaining a license pursuant to 87-4-504; or

(b) harvest game on a shooting preserve without tagging the game pursuant to 87-4-525.

(2) Each shooting preserve operator shall keep records in accordance with 87-4-526.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 55. Unlawful sale of fish or spawn. (1) Except as provided in 87-4-601 and subsections (2) and (3) of this section, a person may not, for speculative purposes, for market, or for sale, catch game fish or remove or cause to be removed the eggs or spawn of any game fish in any way. A person may not sell or offer for sale game fish or the eggs or spawn from game fish.

(2) The restrictions of subsection (1) do not apply to the:

(a) catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-603 by the owner of the pond;

(b) taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish pond licensed under 87-4-603;

(c) catching of whitefish by the holder of a valid fishing license fishing with hook and line or a rod in specified waters designated by rules of the commission;

(d) taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River under rules of the commission; or

(e) sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) A person may possess and sell legally taken nongame fish as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609.

(4) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 56. Unlawful taking of fish or aquatic organism. (1) A person may not take fish or aquatic organisms for commercial purposes without obtaining a permit from the department pursuant to 87-4-609.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 57. Unlawful taking of crayfish. (1) A person may not take crayfish from the waters of the state, except from private fish ponds regulated under 87-4-603 or as provided in subsection (2) of this section, for sale or commercial distribution.

(2) A person may take crayfish from the waters of the state for sale or commercial distribution as fishing bait under rules adopted by the department under 87-4-609.

(3) A person convicted of a violation of this section may be fined not less than \$50 or more than \$500 or may be imprisoned in the county jail for not more than 6 months, or both.

Section 58. Menagerie and zoo offenses. (1) A person may not:

(a) operate a roadside menagerie or wild animal menagerie without a permit obtained pursuant to 87-4-803;

(b) subscribe to any false statement in an application for a permit; or

(c) obtain wild animals for a roadside menagerie, wild animal menagerie, or zoo by capture from the wild or by purchase except in accordance with 87-4-804.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 59. Owning, controlling, or propagating game birds without license. A person who owns, controls, or propagates game birds in violation of Title 87, chapter 4, part 9, shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 60. Owning, controlling, or propagating furbearers without license. A person who owns, controls, or propagates furbearers in violation of 87-4-1002 shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 61. Unlawful acquisition of furbearer. (1) A person may not capture, take, or otherwise acquire a furbearer from the wild for use on a fur farm.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 62. Wild bird, raptor, and falcon offenses. (1) A person who violates any provision of Title 87, chapter 5, part 2, pertaining to the regulation of wild birds, raptors, and falconry, shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 63. Second offense penalties. (1) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (2):

- (a) hunting during a closed season;
- (b) taking an animal or hunting while using projected artificial light;
- (c) hunting without a license;
- (d) unlawful taking of more than double the legal bag limit;
- (e) unlawful possession of more than double the legal bag limit; and
- (f) waste of game by abandonment in the field.

(2) A person convicted of the offenses in subsection (1) in the time periods specified in subsection (1) shall be fined not less than \$2,000 or more than \$5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture unless the court imposes a longer period.

Section 64. Third offense penalties. (1) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (2):

- (a) hunting during a closed season;
- (b) taking an animal or hunting while using projected artificial light;
- (c) hunting without a license; and
- (d) unlawful taking of more than double the legal bag limit.

(2) A person convicted of the offenses in subsection (1) in the time period specified in subsection (1) shall be fined not less than \$5,000 or more than \$10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for life.

Section 65. Additional penalty for use of artificial light or scope. (1) If a person is convicted of illegally taking an animal described in [section 68 or 69] through the use of projected artificial light, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(2) A person convicted of taking an animal while using projected artificial light as described in this section may be subject to the additional penalties provided in [sections 63 and 64].

Section 66. Different penalty for unlawful attempt to hunt or trap. A person convicted of unlawfully attempting to hunt or trap a game animal shall be fined not less than \$200 or more than \$600 or be imprisoned in the county detention center for not more than 60 days, or both.

Section 67. Finding required for restitution. Before restitution may be ordered pursuant to [section 68 or 69], the finder of fact at trial or the court upon entry of a guilty or nolo contendere plea shall find that the illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under [section 68] when bond or bail is forfeited.

Section 68. Restitution for illegal killing or possession of certain wildlife. (1) Except as provided in [section 69] and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

- (a) mountain sheep and endangered species, \$2,000;
- (b) elk, caribou, bald eagle, black bear, wolf, and moose, \$1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, \$500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, \$300;

(e) fur-bearing animals that are not listed in subsection (1)(c) or (1)(d), \$100;

(f) game bird (except swan), \$25;

(g) game fish, \$10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.

Section 69. Restitution for illegal killing or possession of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of purposely or knowingly illegally killing, taking, or possessing a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) mountain sheep with at least one horn equal to or greater than a three-fourth curl as defined by commission regulation, \$30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, \$8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, \$6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, \$8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, \$2,000.

Section 70. Payment — penalty for nonpayment of restitution. (1) In each case of conviction, the court before which the conviction is obtained shall order payment of the sum stated in [section 68 or 69].

(2) Failure to make payment in the time and manner prescribed by the court constitutes civil contempt of court and is punishable as provided in Title 3, chapter 1, part 5.

Section 71. Disposition of proceeds from restitution. All money collected by a court pursuant to [sections 67 through 70] must be remitted to the department of revenue for deposit in the state special revenue fund account to the credit of the department for hunter education purposes or for enforcement.

Section 72. Remedial hunter education program — sentencing. (1) The court may sentence a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges or who is convicted of a hunting violation to complete a remedial hunter education course.

(2) A person who is sentenced by the court to complete a remedial hunter education course shall successfully complete the course before any license privileges may be restored.

(3) The department may not issue a hunting, fishing, or trapping license to a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges until the person has successfully completed the remedial hunter education course.

(4) If the person who is sentenced by the court to complete the remedial hunter education course is not a resident of the state of Montana, the sentencing court shall require the person to complete a similar remedial hunter education course in the person's state of residence. If a similar course does not exist in the person's state of residence, the person shall complete Montana's course before any Montana hunting, fishing, or trapping license may be issued.

(5) This section does not allow the issuance of any licenses to a person whose hunting or fishing privileges have been revoked for life.

Section 73. Costs of imprisonment. Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to [sections 1 through 80] to pay the costs of imprisonment under [sections 1 through 80].

Section 74. Privileges of juveniles. A mandatory forfeiture of privileges imposed pursuant to [sections 1 through 80] does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's current hunting, fishing, or trapping licenses issued by this state and the juvenile's privilege to hunt, fish, or trap in this state upon conviction or forfeiture of bond or bail for a violation of this title.

Section 75. Restriction on special application or entry when ordered to pay restitution. A person convicted or who has forfeited bond or bail under this title and who has been ordered to pay restitution under the provisions of [section 68 or 69] may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a mountain sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period.

Section 76. Suspension of privileges for failure to comply with citation, sentence, or administrative suspension. (1) A person who fails to comply with the terms of a court citation or the terms of an administrative suspension or who fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for the person's arrest, shall forfeit any current hunting, fishing, or trapping license issued by this state to the department, and the person's privilege to hunt, fish, or trap in this state is suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses the person's privileges under this section must be notified by the department or by the administrative authority in person or by mail.

Section 77. Forfeiture of license or permit for littering. A holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, camp, or trap in this state for a period of 1 year from the date of conviction.

Section 78. Revocation of exception. If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by 87-2-801 through 87-2-803 must be revoked for not less than 6 months.

Section 79. Notification of loss of privileges — reinstatement and revocation. (1) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) After a forfeiture period imposed pursuant to [sections 1 through 80] and upon receipt of notification from the court that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs, or restitution, have been met or that the defendant is in compliance with installment payments specified by the court, the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the person is in default on any installment payment.

Section 80. Suspension by administrative authority — notice and surrender of license or permit. If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

Section 81. Penalties. A person who violates this part is subject to the penalties provided in [section 54].

Section 82. Section 45-6-101, MCA, is amended to read:

“45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$1,500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$1,500, injures or kills a commonly domesticated hooved animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.

(5) A person convicted of or who forfeits bond or bail for committing an act of criminal mischief involving property owned or administered by the department of fish, wildlife, and parks ~~is subject to an additional penalty as provided in 87-1-102(2)(e)~~ shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for at least 24 months from the date of conviction or forfeiture.”

Section 83. Section 45-6-203, MCA, is amended to read:

“45-6-203. Criminal trespass to property. (1) Except as provided in 15-7-139, 70-16-111, and 76-13-116, a person commits the offense of criminal trespass to property if the person knowingly:

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

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

(3) A person convicted of or who forfeits bond or bail for committing an act of criminal trespass involving property owned or administered by the department of fish, wildlife, and parks or while hunting, fishing, or trapping ~~is subject to an additional penalty as provided in 87-1-102(2)(f)~~ may be subject to revocation of the person’s privilege to hunt, fish, or trap in this state for up to 24 months from the date of conviction or forfeiture.”

Section 84. Section 81-2-121, MCA, is amended to read:

“81-2-121. Taking of publicly owned wild buffalo or bison that are present on private property — notice — supplemental feeding — penalty. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or bison that is suspected of carrying disease and that is present on the landowner’s private property and is potentially associating with or otherwise threatening the landowner’s livestock if *the landowner or agent*:

(a) ~~the landowner or agent~~ notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or bison that is present on the landowner’s property;

(b) ~~the landowner or agent~~ makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) ~~the landowner or agent~~ is not in violation of subsection (2)(a).

(2) (a) A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of disease. A person who violates this subsection ~~is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1)(2)(a)~~ shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands,

as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) This subsection (2) does not apply to supplemental feeding activities conducted by the department for disease control purposes.”

Section 85. Section 87-1-120, MCA, is amended to read:

“87-1-120. Remedial hunter education program. (1) The department shall develop a remedial hunter education program for hunting law violators.

(2) The program must be funded through money collected by a court pursuant to ~~87-1-111 through 87-1-113~~ [sections 67 through 70].

(3) The department shall determine the qualifications for instructors, hire the instructors, and pay the instructors at a rate determined by the department.

(4) A person who is sentenced by the court to complete a remedial hunter education course shall pay the costs directly attributable to the person’s participation in the remedial hunter education program.

(5) The course instructor shall notify the sentencing court of the participant’s attendance record and of the participant’s success or failure in completing the program.

(6) A participant whose hunting, fishing, or trapping license has been revoked shall successfully complete the program before license privileges may be reinstated.”

Section 86. Section 87-1-232, MCA, is amended to read:

“87-1-232. Tattoo records. (1) The department shall maintain a record of each animal reported to it pursuant to ~~87-1-231~~ [section 49]. The record shall indicate:

(a) the person by whom the animal was captured or is held in captivity;

(b) the location of the capture or captivity;

(c) the date the animal was tattooed;

(d) the purpose of the captivity or capture; and

(e) any death, escape, release, transfer of custody, or other disposition of ~~such~~ the animal.

(2) The department shall establish by rule a fee to be charged, which may not exceed the administrative cost of maintaining the record required by this section.”

Section 87. Section 87-1-234, MCA, is amended to read:

“87-1-234. Exceptions to tattoo and compensation requirements. Sections ~~87-1-231 through 87-1-232~~, 87-1-233, and [section 49] do not apply to those animals:

(1) captured and released as part of an ongoing game management program or an ongoing predator control program unless ~~such~~ the animals have been involved in livestock killing; or

(2) captured and released as part of a scientific, educational, or research program as certified by the department.”

Section 88. Section 87-1-601, MCA, is amended to read:

“87-1-601. (Temporary) Use of fish and game money. (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source

must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines *imposed* pursuant to 87-1-102 [sections 1 through 80].

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs.

87-1-601. (Effective March 1, 2011) Use of fish and game money. (1) (a) Except as provided in 87-1-290 and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title

87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

- (i) the sale of surplus real property;
- (ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and
- (iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines *imposed* pursuant to 87-1-102 [sections 1 through 80].

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 89. Section 87-1-803, MCA, is amended to read:

“87-1-803. Reciprocal recognition of license suspensions — suspension of privileges for conviction in participating state. (1) When the department receives notice of the suspension of a person’s hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading to the suspension could have led to the forfeiture of privileges under Montana law. If the department determines that the person’s privileges could have been forfeited, the department shall suspend the person’s privileges to hunt, trap, or fish in Montana for the same period as imposed by the participating state or for the minimum period that would have been imposed under Montana law, whichever period is longer.

(2) When the department receives notice of a conviction of a Montana resident from the licensing authority of the issuing state, the department shall treat the conviction as if it had occurred in Montana and shall determine whether the conviction could have led to the forfeiture of the resident’s hunting, trapping, or fishing privileges under Montana law. If the department determines that the resident’s privileges could have been forfeited, the department shall suspend the resident’s privileges to hunt, trap, or fish in Montana for the minimum period that would have been imposed under Montana law.

(3) Notice of the suspension must be sent to the person, who shall surrender any current Montana hunting, trapping, and fishing licenses to the department within 10 days.

~~(4) A person whose privileges have been suspended and who hunts, traps, or fishes in Montana, who applies for or purchases any licenses or permits to hunt, trap, or fish in Montana, or who refuses to surrender any current hunting, trapping, and fishing licenses as required is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(4).”~~

Section 90. Section 87-1-804, MCA, is amended to read:

“87-1-804. Suspension of privileges for failure to comply with citation issued in participating state. (1) The department shall suspend the hunting, trapping, or fishing privileges of any resident of Montana upon notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.

(2) Notice of the suspension must be sent to the resident, who shall surrender all current Montana hunting, trapping, and fishing licenses to the department within 10 days.

~~(3) A person who hunts, traps, or fishes, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, trapping, or fishing license in violation of this section is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(4).”~~

Section 91. Section 87-2-101, MCA, is amended to read:

“87-2-101. Definitions. As used in 87-1-102, chapter 3, and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Angling” or “fishing” means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) “Bait” means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

~~(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.~~

~~(4) "Commission" means the state fish, wildlife, and parks commission.~~

~~(5)~~(3) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(6)~~(4) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(7)~~(5) "Game fish" means all species of the family salmonidae *Salmonidae* (chars, trout, salmon, grayling, and whitefish); all species of the genus *stizostedion* *Stizostedion* (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus ~~esox~~ *Esox* (northern pike, pickerel, and muskellunge); all species of the genus ~~micropterus~~ *Micropterus* (bass); all species of the genus ~~polyodon~~ *Polyodon* (paddlefish); all species of the family acipenseridae *Acipenseridae* (sturgeon); all species of the genus ~~lota~~ *Lota* (burbot or ling); the species ~~perea~~ *Perca* *flavescens* (yellow perch); all species of the genus ~~pomoxis~~ *Pomoxis* (crappie); and the species ~~ictalurus~~ *Ictalurus* *punctatus* (channel catfish).

~~(8)~~(6) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(9)~~(7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; ~~wilson's~~ *Wilson's* snipes or jacksnipes; and mourning doves.

~~(10)~~(8) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(11)~~(9) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(12)~~(10) "Person" means individuals, associations, partnerships, and corporations.

~~(13)~~(11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

~~(14)~~(12) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(15)~~(13) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(16)(14)~~ “Wild buffalo” means buffalo or bison that have not been reduced to captivity.”

Section 92. Section 87-2-104, MCA, is amended to read:

“87-2-104. Number of licenses, permits, or tags allowed — fees. ~~(1) It is unlawful for a person to apply for, purchase, or possess more than one license, permit, or tag of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (4) for game management purposes. However, when more than one license, permit, or tag is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses, permits, or tags than are authorized.~~

~~(2) It is unlawful for the holder of a replacement license, permit, or tag to make the replacement license, permit, or tag available for use by another person.~~

~~(3)(1)~~ The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

~~(4)(2)~~ When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, Class B-8 nonresident deer B, or special antelope license to an applicant; and

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant.

~~(5)(3)~~ For all of the game management licenses issued under subsection ~~(4)~~ (2), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(6)(4)~~ When authorized by the commission for game management purposes, the department may issue Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. Unless otherwise reduced pursuant to subsection ~~(7)~~ (5), the fee for a Class B-12 license is \$273. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(7)(5)~~ The fee for a resident or nonresident license of any class issued under subsection ~~(4)~~ (2) or ~~(6)~~ (4) may be reduced annually by the department.”

Section 93. Section 87-2-106, MCA, is amended to read:

“87-2-106. Application for license — ~~penalties for violation — forfeiture of privileges.~~ (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant’s name, age, [last four digits of the applicant’s social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver’s license, Montana driver’s examiner’s identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant’s burden to provide documentation establishing the applicant’s identity and qualifications to

purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

~~(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.~~

~~(7)~~(6) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-1-102(1) [section 79(2)].

~~(8) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:~~

~~(a) wildlife conservation license;~~

~~(b) hunting license or permit; or~~

~~(c) fishing license or permit.~~

(9) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (8) shall be:

(i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (9)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(10) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

~~[(11)]~~(7) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of

public health and human services for use in administering Title IV-D of the Social Security Act.]

(12)(8) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)”

Section 94. Section 87-2-202, MCA, is amended to read:

“87-2-202. (Temporary) Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). ~~It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.~~

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

87-2-202. (Effective March 1, 2011) Application — fee — expiration.

(1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). ~~It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.~~

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when

the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)”

Section 95. Section 87-2-411, MCA, is amended to read:

“87-2-411. License required to hunt migratory Migratory game birds bird licenses — fees — disposition of proceeds. (1) ~~A person 16 years of age or older may not hunt migratory game birds without first having obtained a valid migratory bird license from the department.~~ The fee for a resident to purchase the *migratory game bird* license is \$6.50. The fee for a nonresident to purchase the *migratory game bird* license is \$50.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana.”

Section 96. Section 87-2-521, MCA, is amended to read:

“87-2-521. Class D-3—resident hound training license. A person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of \$5, may receive a Class D-3 hound training license that entitles the holder to use a dog or dogs to aid in pursuing mountain lions or bobcats during the training season established in ~~87-3-124(3)(e)~~ [section 36(4)].”

Section 97. Section 87-2-807, MCA, is amended to read:

“87-2-807. Taking migratory game birds for propagation — avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101(9), for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

- (a) the species of migratory game birds allowed to be taken under the permit;
- (b) whether eggs or hatched birds, or both, may be taken;
- (c) the number of eggs or hatched birds, or both, that may be taken;
- (d) areas in which collection may be made;
- (e) means by which collection may be made;
- (f) the time period for which the permit is valid; and
- (g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section.”

Section 98. Section 87-3-110, MCA, is amended to read:

“87-3-110. ~~Registration for sale of~~ Regulation of certain grizzly bears and grizzly bear parts. (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount ~~thereof of a lawfully killed grizzly bear~~ may sell it if it has been registered with the department in the manner and upon forms provided by the department. The registration form must specifically describe the grizzly bear or the hide, head, or mount thereof and must accompany it upon any sale.

(2) Bears or parts ~~thereof of bears~~ may be registered as follows:

(a) Before January 1, 1986, any lawfully killed grizzly bear or part ~~thereof of the bear~~ may be registered.

(b) On or after January 1, 1986, bears lawfully killed in Montana may be registered within 10 days after the date of kill, and bears lawfully killed outside Montana may be registered within 3 months after the date of kill upon presentation of proof of lawful kill.

(3) Registration under this section does not legalize any prior illegal act, such as the unlawful killing or theft of a grizzly bear or part ~~thereof of the bear~~.

(4) *A person who is responsible for the death of a grizzly bear shall deliver all parts of the grizzly bear required by department or commission regulation for scientific purposes to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the person any bone structure and skull within 1 year upon written request. The hide must be returned immediately.”*

Section 99. Section 87-3-121, MCA, is amended to read:

“87-3-121. ~~Conditions for award of prizes~~ Regulation of contests. (1) ~~It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, fur-bearing animals, or any bird or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.~~

(2) The commission shall adopt rules to regulate contests, *in accordance with provisions of [section 15]*, by a person, firm, ~~corporation, association,~~ or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission’s rules must be based on the commission’s duty under Title 87 to protect, preserve, and propagate fish in the state.

(3) ~~This section shall not be construed to prohibit the award of prizes for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.”~~

Section 100. Section 87-3-126, MCA, is amended to read:

~~“87-3-126. Restrictions on use~~ *Use of aircraft or boats helicopter — exception — authority to issue permits and adopt rules.* (1) (a) A game bird or game or fur-bearing animal may not be killed, taken, or shot at from any aircraft, including helicopters.

(b) ~~An aircraft or helicopter may not be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals.~~

(c) ~~A powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail may not be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.~~

(2) ~~It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location of the game or fur-bearing animals to any person on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife.~~

(3) ~~Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:~~

(a) ~~during emergency situations;~~

(b) ~~when search and rescue operations are being conducted; or~~

(c) ~~for predator control as permitted by the department of livestock.~~

(4) ~~An aircraft or helicopter may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department. The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit. The department may not issue permits during any legal hunting season for the species for which a permit was requested. The permitting program must comply with requirements of federal law for such *the* activity.”~~

Section 101. Section 87-3-204, MCA, is amended to read:

~~“87-3-204. Restrictions on fishing methods — allowed fishing methods~~ *Designation of state waters for particular fishing methods.* (1) ~~A game fish may not be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any gun, trap, or other device to entrap game fish be used, made, or set.~~

(2) ~~Except when specifically authorized by law or commission rule, a person may not:~~

(a) ~~take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand or within immediate control;~~

(b) ~~take or catch fish with hook baited with any poisonous substance or using any poisonous substance, including fish berries; or~~

(c) ~~take or catch fish using fishtraps, grabhooks, seines, nets, spears, gigs, or other similar means for catching fish.~~

~~(3)(1)~~ (a) The commission may designate waters within the state in which rubber or spring-propelled spears employed by persons swimming or submerged in the water or traps, seines, nets, spears, or gigs may be used for taking:

- (i) nongame fish; or
- (ii) walleyed pike, sauger, northern pike, burbot (ling), and whitefish.

(b) The commission may adopt rules for the taking of fish under this subsection ~~(3)(1)~~, and the rules may be specific to the water designated. The designated waters may be closed at the discretion of the commission.

(c) Except when the taking of game fish is authorized pursuant to subsection ~~(3)(a)(ii)~~ ~~(1)(a)(ii)~~, all game fish captured while fishing as authorized under this subsection ~~(3)(1)~~ must be returned uninjured to the waters from which they were taken.

~~(4)(2)~~ The commission may designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines that may be used as setlines.

~~(5)~~ Game fish must be taken only by hook and single line or single rod in hand or within immediate control. This does not prevent, however:

~~(a)~~ the snagging of paddlefish, chinook salmon, and kokanee (sockeye salmon) when the commission declares an open season when paddlefish, chinook salmon, and kokanee (sockeye salmon) may be taken by snagging;

~~(b)~~ the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under rules and regulations that the commission prescribes;

~~(c)~~ the taking of game fish pursuant to subsection ~~(3)~~;

~~(d)~~ the use of landing net or gaff to land a game fish after the game fish has been hooked as specified in this subsection ~~(5)~~;

~~(e)~~ the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in waters designated by the commission;

~~(f)~~ the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under the rules and regulations that the commission prescribes;

~~(g)~~ the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod; or

~~(h)~~ the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March, under rules and regulations prescribed by the commission.

~~(6)(3)~~ The commission may designate waters where authorized commercial fishing operators may use approved nets, seines, and traps to fish for designated species of nongame fish.”

Section 102. Section 87-3-221, MCA, is amended to read:

“87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit. (1) It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless the importations are shipped direct from the source to destination and a written certification that the source is free of all fish pathogens specified by the department as posing a threat to existing fisheries accompanies the shipment. Certification must be made by a fish pathologist approved by the director.

Certification of the source may be by inspection conducted annually or at other times that the director may order.

(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations do not present a substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in the permittee's other permit or permits. ~~It is unlawful to import live salmonid fish or eggs into Montana without first obtaining the permit required by this subsection or to violate any conditions of the permit.~~

Section 103. Section 87-3-222, MCA, is amended to read:

"87-3-222. When certification unnecessary. (1) Nothing in 87-3-221 through 87-3-224 or ~~87-3-209~~ *[section 20(1)(b)]* may restrict the importation and transportation of dead salmonid fish or eggs when the fish or eggs have been processed or prepared in a manner that kills those fish pathogens specified by the department as posing a threat to fisheries.

(2) Dead salmonid fish or eggs transported into Montana for processing or caught wild are exempt from the requirement for certification. However, it is unlawful to discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems."

Section 104. Section 87-3-224, MCA, is amended to read:

"87-3-224. Enforcement. The cargo and vehicle involved in a violation of ~~87-3-209~~ *[section 20(1)(b)]* and 87-3-210 or 87-3-221 through 87-3-223 may, at the option of the department, either be denied the right to proceed further within the state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of transportation of the provisions regarding importation of salmonid and nonsalmonid fish and eggs so that the department of transportation may enforce the provisions at ports of entry and checking stations under 60-2-303."

Section 105. Section 87-3-403, MCA, is amended to read:

"87-3-403. Migratory game birds — closed season and bag limits. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit, and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the department by proper action will adopt, advertise, and enforce ~~such~~ *any* proclaimed regulations as may be applicable to the state of Montana. ~~Any~~ *A person or persons violating any provisions who violates a provision* of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided ~~by law~~ *is subject to the provisions of [section 39].*"

Section 106. Section 87-4-201, MCA, is amended to read:

"87-4-201. Regulation of taxidermists. (1) As used in this section, "taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(2) Before conducting the business of a taxidermist, a taxidermist shall obtain from the department a taxidermist's license and pay an annual license fee of \$50.

(3) A taxidermist shall keep a written record of all the articles of wildlife in the taxidermist's possession or control, including the following information:

- (a) the kind and number of each article of wildlife;
- (b) the name and residence of the owner of the article of wildlife; and
- (c) all the articles of wildlife shipped and to whom and where shipped.

(4) The taxidermist shall keep the written record required under subsection (3) for as long as the articles of wildlife remain in the possession of the taxidermist or at least 5 years, whichever is longer. These records must be open to inspection by a warden at any reasonable time.

~~(5) Upon conviction for a violation of this section, the taxidermist's license of the person convicted may be revoked by the court.~~

(5) A person who violates this section is subject to the penalties provided in [section 51]."

Section 107. Section 87-4-306, MCA, is amended to read:

"87-4-306. Violations. ~~No~~ A person, firm, company, or corporation may not violate any of the provisions of this part. *A person convicted of a violation is subject to the penalties provided in [section 52]."*

Section 108. Section 87-4-407, MCA, is amended to read:

"87-4-407. License required — moratorium — penalty — seizure of illegally possessed animals. (1) A person may not operate an alternative livestock ranch in this state without having first obtained an alternative livestock ranch license from the department prior to November 7, 2000. A person may not apply for or be granted a license after that date.

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is ~~guilty of a misdemeanor and is~~ subject to the penalties provided in ~~87-4-427(4)~~ *[section 53]*.

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 109. Section 87-4-427, MCA, is amended to read:

"87-4-427. Revocation of license — criteria — penalties. (1) The department may revoke any alternative livestock ranch license or impose any of the penalties or conditions specified in subsection (3) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate an alternative livestock ranch according to the provisions of this part, rules adopted under this part, or stipulations of the alternative livestock ranch license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of \$100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) negligent or willful misconduct of the alternative livestock ranch operation, including but not limited to the unauthorized egress and ingress of game animal species or alternative livestock that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the alternative livestock of others;

(f) a material and willful falsification of any required alternative livestock ranch records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of an alternative livestock ranch;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other alternative livestock and operators or to native wildlife or habitat.

(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

(3) If the department finds, after opportunity for a hearing required under 87-4-428, that an alternative livestock ranch licensee or the principal manager is responsible for any act or omission set out in subsection (1), the department may in its discretion impose any one or more of the following penalties upon the licensee:

(a) revocation of the alternative livestock ranch license for up to 5 years;

(b) imposition of a civil penalty not to exceed \$5,000, restoration of any damage to native wildlife, or both;

(c) deferral of the revocation of a license subject to the completion of or adherence to specified conditions; or

(d) reprimand of a licensee.

(4) In addition to the revocation of a license or other penalties allowed by this section, a person who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to ~~criminal prosecution and a fine of not more than \$1,000, imprisonment in the county jail for not more than 1 year, or both. Any violation of 87-3-118 is subject to prosecution and penalties under that section the penalties provided in [section 53].~~

Section 110. Section 87-4-601, MCA, is amended to read:

“87-4-601. Sale of fish or spawn unlawful—exceptions. (1) Except as provided in subsections (2) through (4), a person may not, for speculative purposes, for market, or for sale, in any way, catch game fish or remove or cause to be removed the eggs or spawn of any game fish. A person may not sell or offer for sale game fish or the eggs or spawn from game fish.

(2) The restrictions of subsection (1) do not apply to:

~~(a) the catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-603 by the owner of the pond;~~

~~(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish pond licensed under 87-4-603;~~

~~(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules of the commission;~~

~~(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules that the commission prescribes; or~~

~~(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.~~

~~(3) (a)(1) Until June 30, 2018, a person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the Burlington northern railroad bridge at Glendive to the North Dakota state line during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) (2) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.~~

~~(b)(2) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.~~

~~(e)(3) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) (2) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.~~

~~(d) (i)(4) (a) Thirty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.~~

~~(ii)(b) Seventy percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b) (2), two area local government representatives, and two representatives of area anglers. The advisory committee shall solicit~~

and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.

(4)(5) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609.”

Section 111. Section 87-4-609, MCA, is amended to read:

“87-4-609. Regulation of commercial taking of fish or aquatic organisms — permit — rulemaking authority. (1) The department shall regulate the taking, for sale or commercial distribution, of:

- (a) crayfish for fishing bait;
- (b) crayfish from private fish ponds regulated under 87-4-603;
- (c) mysis shrimp;
- (d) designated species of nongame fish in waters designated by the commission pursuant to 87-3-204;
- (e) whitefish as authorized by statute; and
- (f) other aquatic organisms.

(2) ~~It is unlawful for a person~~ *In order to obtain a permit* to take fish or aquatic organisms for commercial purposes ~~without obtaining a permit from the department. A permit~~ *sale or commercial distribution, an applicant shall provide the department with sufficient details of the proposed operation to take any fish or aquatic organism for sale or commercial distribution to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.*

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of fish or aquatic organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements, to prevent overharvest or conflict with fishing and recreational uses of the waters.”

Section 112. Section 87-4-803, MCA, is amended to read:

“87-4-803. Permits. (1) The department may grant permits for roadside menageries, wild animal menageries, and zoos. ~~It is unlawful for any person to operate a roadside menagerie or wild animal menagerie without a permit.~~ Application for a permit must be made to the director on a form prescribed by the director. The annual permit fee for five or less animals is \$10. The annual permit fee for more than five animals is \$25. Permits expire on December 31 but may be renewed upon payment of the annual fee and submission of a renewal application. This section does not apply to the United States, the state of Montana, or any county or city. A person who subscribes to any false statement in application for a permit is ~~guilty of a misdemeanor~~ *subject to the provisions of [section 58]* and may be denied a permit.

- (2) (a) A permit application for a roadside menagerie must include:
- (i) the applicant's name and address;
 - (ii) the exact location of the facility;
 - (iii) a list of species and the number of animals to be held in the facility;
 - (iv) the type of facility contemplated, including cage specifications;
 - (v) a copy of all required federal permits for exhibition of wild animals; and
 - (vi) a copy of a liability insurance policy to cover bodily injury or property damage.
- (b) A permit application for a wild animal menagerie must include:
- (i) the applicant's name and address;
 - (ii) the exact location of the facility, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;
 - (iii) a list of species and the number of animals to be held in the facility;
 - (iv) the type of facility contemplated, including cage specifications; and
 - (v) information demonstrating that the applicant is responsible.
- (c) A permit application for a zoo must include:
- (i) the applicant's name and address;
 - (ii) the exact location of the facility;
 - (iii) a copy of the nonprofit corporation documents approved by the secretary of state's office;
 - (iv) a copy of the required federal permits for exhibition of wild animals; and
 - (v) if applicable, a copy of the American zoo and aquarium association accreditation program specific to the facility.
- (3) Renewal applications for roadside menageries and wild animal menageries must include an accounting of all wild animals on the facility.
- (4) A permit may not be granted by the department until it has satisfactorily verified that the provisions for housing and caring for the animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.
- (5) A permit is not transferable to another person."

Section 113. Section 87-4-807, MCA, is amended to read:

"87-4-807. Enforcement and penalty. (1) The provisions of this part ~~shall~~ *must* be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this part shall upon conviction be punished as provided in ~~87-1-102 [section 58]~~, and at the discretion of the court, the permit and all rights and privileges inherent ~~therein~~ *in the permit* may be forfeited.

(2) Any animals being kept in violation of any section of this part may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate, and the commission shall hold a hearing on ~~such~~ an appeal, ~~and the~~ *The* decision of the commission ~~shall be~~ *is* final."

Section 114. Section 87-4-903, MCA, is amended to read:

"87-4-903. Game bird farm license required. Except as provided in 87-4-902, a person may not own, control, or propagate game birds unless the person holds a current game bird farm license from the department. *A person who violates this section is subject to the penalties provided in [section 59].*"

Section 115. Section 87-4-915, MCA, is amended to read:

“87-4-915. Field trials — permits. (1) As used in this section, “field trial” means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

~~(2) A person may not conduct a field trial unless the person has a permit under this section.~~ Applicants for a permit to conduct a field trial shall apply to the director upon a form furnished by the department for that purpose. The application must be signed and sworn to by the applicant, stating the applicant’s name and address, the name and address of any national affiliate, the place for the field trial clearly defined, the date or dates of the proposed field trial, whether live birds are to be used, and any other information required by the director to determine the advisability of granting permission for the proposed field trial. The application must state that if a permit is granted, the applicant will carefully flush all wild game birds from fields used for the field trial each day before the field trial begins and will not permit dogs to run free in fields that have not been carefully flushed. The application must be presented to the director not less than 20 days prior to the date proposed for the field trial.

(3) The director may refuse any application that the director determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds in this state. Any denial by the director of an application must state the reasons for denial and must be mailed to the applicant within 10 days of receipt of the application.

~~(4) An applicant receiving a permit to conduct a field trial may not violate or authorize violation of any of the terms of the permit.~~

~~(5)~~(4) All live game birds used in a field trial must be tagged before being planted or released and may be planted or released only in the presence of a representative of the department. If an untagged bird is shot during any field trial, the person to whom the permit was issued shall immediately replace it with a live bird.

~~(6)~~(5) (a) Dogs may be trained in open fields at any time without permission of the director only if:

(i) live game birds are not killed or captured during training; and

(ii) the training is more than 1 mile from any bird nesting or management area or game preserve.

(b) A person may train dogs with a method that will kill birds acquired from a game bird farm only after receiving a written permit from the department and only in compliance with the terms of the permit.”

Section 116. Section 87-4-1002, MCA, is amended to read:

“87-4-1002. Fur farm license required — applicability. (1) Except as provided in subsection (2), a person may not own, control, or propagate furbearers unless the person holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts of furbearers.

(3) *A person who violates this section is subject to the penalties provided in [section 60].”*

Section 117. Section 87-5-204, MCA, is amended to read:

“87-5-204. License and rules for falconry and raptors. (1) The commission shall adopt specific rules for the keeping of records and for the trapping, taking, possession by residents and nonresidents, selling or transfer of

possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry and set license qualifications and fees. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive. ~~Except as provided in 87-5-210, it is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.~~

(2) Licensees must have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers losing raptors at game birds must have in possession a valid resident or nonresident upland game bird license or waterfowl stamp, as appropriate.

(3) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department."

Section 118. Section 87-5-703, MCA, is amended to read:

"87-5-703. Applicability to other provisions for importation or introduction of wildlife. Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to the provisions on importation or introduction of wildlife contained in the following laws:

- (1) Title 80;
- (2) ~~87-3-207~~ [section 20(1)(a)] and 87-3-208;
- (3) 87-3-221 through 87-3-224 or ~~87-3-209~~ [section 20(1)(b)], 87-3-210, and 87-3-225 through 87-3-227;
- (4) 87-4-422;
- (5) 87-5-112;
- (6) 87-5-205;
- (7) 87-5-302; or
- (8) Title 81, chapter 2."

Section 119. Section 87-5-721, MCA, is amended to read:

"87-5-721. Penalty — license and permit revocation and denial. (1) ~~Except as provided in subsection (2), a person who violates a provision convicted of a violation of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition,~~ the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than \$500 or more than \$5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend \$500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit ~~from the date of conviction or forfeiture~~ any current hunting, fishing, or trapping license issued ~~under this title by this state~~ and the privilege to hunt, fish, or trap in this state for not less than 24 months *from the date of conviction or forfeiture*. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state ~~for the lifetime of that person life~~.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within a time set by the department, not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife.”

Section 120. Repealer. The following sections of the Montana Code Annotated are repealed:

- 87-1-102. Penalties — violation of state law.
- 87-1-108. Suspension of privileges for failure to comply with citation or sentence.
- 87-1-109. Fish and game violation as inchoate offense.
- 87-1-110. Fish and wildlife code not to supersede criminal code — statute of limitations.
- 87-1-111. Restitution for illegal killing or possession of certain wildlife.
- 87-1-112. Finding required.
- 87-1-113. Payment — penalty for nonpayment.
- 87-1-114. Disposition of proceeds.
- 87-1-115. Restitution for illegal killing or possession of trophy wildlife.
- 87-1-121. Remedial hunter education program — sentencing.
- 87-1-125. Violation of orders or rules — penalties.
- 87-1-208. Inspection at checking station.
- 87-1-231. Tattooing of bears, wolves, tigers, mountain lions, or coyotes — when required — penalty.
- 87-2-103. License required.
- 87-2-109. Carrying and exhibiting license and identification.
- 87-2-110. Alteration, attachment, or transfer of license.
- 87-2-112. Forfeiture of license or permit for littering.
- 87-2-114. Misdemeanor and felony possession of hunting or fishing license or permit — penalties.
- 87-2-120. Lawful means of angling or fishing.
- 87-2-203. Unlawful sales of licenses.
- 87-2-205. False statement in license application.
- 87-2-509. Tagging of carcasses of game animals.
- 87-2-604. Permission of landowner required.
- 87-2-804. Revocation of exception.

- 87-3-101. General restrictions.
- 87-3-102. Waste of fish or game.
- 87-3-103. Limit on number of game animals hunted or killed.
- 87-3-104. Unlawful to hunt or fish during closed season.
- 87-3-105. Unlawful to import for introduction or to introduce or transplant wildlife.
- 87-3-107. Use of snare lawful under certain conditions.
- 87-3-108. Restrictions on use of reproduced sounds.
- 87-3-109. Attempting to take simulated wildlife decoy — penalty.
- 87-3-111. Unlawful possession, shipping, or transportation of game fish, birds, game animals, or fur-bearing animals — exceptions — penalties.
- 87-3-112. Possession and unlawful use of fishing implements.
- 87-3-116. Outfitting without license — penalties — disposition of fines.
- 87-3-117. Definitions of lawfully killed, captured, or taken and unlawfully killed, captured, or taken.
- 87-3-118. Unlawful sale of game fish, birds, game animals, or fur-bearing animals — penalty.
- 87-3-123. Use of silencers or mufflers on firearms forbidden.
- 87-3-124. Dogs — restrictions on hunting — penalty for chasing hooved game animals.
- 87-3-125. Restrictions on use of motor vehicles while hunting.
- 87-3-130. Taking of wildlife to protect persons or livestock.
- 87-3-134. Restriction on use of electronic motion-tracking device while hunting.
- 87-3-135. Restrictions on use of archery equipment.
- 87-3-141. Definitions.
- 87-3-142. Harassment prohibited.
- 87-3-143. Penalty.
- 87-3-144. Injunction.
- 87-3-205. Unlawful to possess net or seine — exceptions.
- 87-3-206. Unlawful to use explosives or poisons in taking fish.
- 87-3-207. Unlawful to place caged fish in public waters — exception.
- 87-3-209. Intrastate movement of diseased fish or eggs unlawful.
- 87-3-301. Shotgun loads regulated by department.
- 87-3-302. Colored garments required on big game hunters.
- 87-3-304. Landowner's permission required for hunting — penalty.
- 87-3-305. Unlawful to hunt deer within city or town boundaries.
- 87-3-306. Unlawful to destroy evidence of sex.
- 87-3-307. Contests based on size of game animals unlawful.
- 87-3-401. Restrictions on rifles for bird hunting.
- 87-3-402. Unlawful to violate closed season on certain game birds.
- 87-3-404. Tagging of turkey.
- 87-3-405. Failure to tag turkey.
- 87-3-501. Open and closed season for fur-bearing animals — exception.

- 87-3-503. Destruction of beaver and muskrat houses unlawful.
- 87-3-504. Metal tags required on traps.
- 87-3-505. Penalty.
- 87-3-506. Wasting of fur-bearing animals.
- 87-3-507. Unlawful to disturb traps or trapped animals belonging to another — exception.
- 87-4-608. Unlawful taking of crayfish — penalty.
- 87-4-1014. Unlawful capture.

Section 121. Codification instruction. (1) [Sections 1 through 80] are intended to be codified as an integral part of Title 87, and the provisions of Title 87 apply to [sections 1 through 80].

(2) [Section 81] is intended to be codified as an integral part of Title 87, chapter 4, part 5, and the provisions of Title 87, chapter 4, part 5, apply to [section 81].

Section 122. Coordination instruction. If both House Bill No. 337 and [this act] are passed and approved, then [sections 2 and 4 of House Bill No. 337] are void and [section 1 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 1. Definitions. Unless the context requires otherwise, in [sections 1 through 80], the following definitions apply:

(1) “Alternative livestock” means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) “Alternative livestock ranch” means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) (a) “Bait” means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(4) “Closed season” means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(5) “Cloven-hoofed ungulate” means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(6) “Conviction” means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person’s appearance in court that has not been vacated.

(7) "Field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(8) "Fishing" means to take fish or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(9) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(10) "Fur farm" means enclosed land upon which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(11) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

(12) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(13) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus Pomoxis (crappie); and the species *Ictalurus punctatus* (channel catfish).

(14) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(15) "Knowingly" has the meaning provided in 45-2-101.

(16) "Livestock" includes ostriches, rheas, and emus.

(17) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(18) "Negligently" has the meaning provided in 45-2-101.

(19) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(20) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(21) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(22) "Person" means an individual, association, partnership, and corporation.

(23) "Possession" has the meaning provided in 45-2-101.

(24) "Predatory animal" means coyote, weasel, skunk, and civet cat.

(25) "Purposely" has the meaning provided in 45-2-101.

(26) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(27) "Resident" has the meaning provided in 87-2-102.

(28) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(29) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barter, or exchanges an interest either in game or fish for an article or thing of value.

(30) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

(31) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(32) "Trap" means to take or participate in the taking of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(33) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(34) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(35) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

(36) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(37) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing."

Section 123. Coordination instruction. If both House Bill No. 536 and [this act] are passed and approved, then [sections 1 of House Bill No. 536], amending 87-3-111, is void and [section 8 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 8. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal.

(1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) paddlefish roe as caviar under the provisions of 87-4-601; or

(e) captive-reared migratory waterfowl.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo,

caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$300 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, the person shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in [section 63].

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) “unlawfully killed, captured, or taken” means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].”

Section 124. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 3 of House Bill No. 336], amending 87-3-102, is void and [section 11 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 11. Waste of game animal, game bird, or game fish. (1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food.

(3) A person responsible for the death of a mountain lion, except as provided in [section 6], may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to 87-3-110.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than \$50 or more than \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to [section 67 through 69].

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in [section 63].”

Section 125. Coordination instruction. If both House Bill No. 536 and [this act] are passed and approved, then [section 2 of House Bill No. 536], amending 87-3-118, is void and [section 12 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 12. Unlawful sale of game fish, bird, game animal, or fur-bearing animal. (1) A person may not purposely or knowingly

sell, purchase, or exchange all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit the:

(a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court.

(5) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(6) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken."

Section 126. Coordination instruction. If both House Bill No. 536 and [this act] are passed and approved, then [section 13 of Senate Bill No. 124] is void.

Section 127. Coordination instruction. If both Senate Bill No. 135 and [this act] are passed and approved, then [section 1 of Senate Bill No. 135],

amending 87-3-124, is void and [section 36 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 36. Unlawful use of dog while hunting. (1) Except as provided in subsections (3) through (6), a person may not:

(a) chase any game animal or fur-bearing animal with a dog; or

(b) purposely, knowingly, or negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal. If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) Except as provided in subsection (3)(d), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs; and

(d) use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (2).

(4) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.

(5) (a) A person with a valid hunting license issued pursuant to Title 87, chapter 2, may use a dog to track a wounded game animal during an appropriate open season. Any person using a dog in this manner:

(i) shall maintain physical control of the dog at all times by means of a maximum 50-foot lead attached to the dog's collar or harness;

(ii) during the general season, whether handling or accompanying the dog, shall wear hunter orange material pursuant to 87-3-302;

(iii) may carry any weapon allowed by law;

(iv) may dispose of the wounded game animal using any weapon allowed by the valid hunting license; and

(v) shall immediately tag an animal that has been reduced to possession in accordance with 87-2-509.

(b) Dog handlers tracking a wounded game animal with a dog are exempt from licensing requirements under Title 87, chapter 2, as long as they are accompanied by the licensed hunter who wounded the game animal.

(6) Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(7) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not

more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(8) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].”

Section 128. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 4 of House Bill No. 336], amending 87-3-506, is void and [section 48 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 48. Waste of fur-bearing animal. (1) A person may not waste a fur-bearing animal by purposely or knowingly:

(a) failing to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attending traps or snares so that fur-bearing animals are wasted; or

(c) wasting the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) The following are exempt from this section:

(a) federal, state, and county predator control programs; and

(b) pelts of muskrat and beaver killed pursuant to [section 47(2)].

(4) As used in this section, “pelt” means the pelt, skin, or fur of a fur-bearing animal.

(5) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to [section 67 and 68].”

Section 129. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 1 of House Bill No. 336], amending 87-1-111, is void and [section 68 of Senate Bill No. 124] reads as follows:

“NEW SECTION. Section 68. Restitution for illegal killing, possession, or waste of certain wildlife. (1) Except as provided in [section 69] and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the illegal taking, killing, possession, or waste of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) mountain sheep and endangered species, \$2,000;

(b) elk, caribou, bald eagle, black bear, wolf, and moose, \$1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, \$500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, \$300;

- (e) fur-bearing animals that are not listed in subsection (1)(c) or (1)(d), \$100;
- (f) game bird (except swan), \$25;
- (g) game fish, \$10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.”

Section 130. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 2 of House Bill No. 336], amending 87-1-115, is void and [section 69 of Senate Bill No. 124] reads as follows:

“**NEW SECTION. Section 69. Restitution for illegal killing, possession, or waste of trophy wildlife.** In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of purposely or knowingly illegally killing, taking, possessing, or wasting a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

- (1) mountain sheep with at least one horn equal to or greater than a three-fourth curl as defined by commission regulation, \$30,000;
- (2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, \$8,000;
- (3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, \$6,000;
- (4) antlered deer with at least four points on one antler as defined by commission regulation, \$8,000;
- (5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, \$2,000.”

Section 131. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 132. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 2011

CHAPTER NO. 259

[SB 146]

AN ACT DECLARING THAT CERTAIN TRANSFER FEE COVENANTS DO NOT RUN WITH THE TITLE TO REAL PROPERTY AND ARE UNENFORCEABLE AT LAW OR IN EQUITY AGAINST A SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE OF REAL PROPERTY AS A COVENANT, AN EQUITABLE SERVITUDE, OR OTHERWISE; DECLARING THAT A LIEN FILED AGAINST REAL PROPERTY TO ENFORCE THE PAYMENT OF A TRANSFER FEE IS VOID AND UNENFORCEABLE; AMENDING SECTION 70-17-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Findings — purpose. The legislature finds and declares that transfer fee covenants, as defined in [section 2], impair the marketability and transferability of real property by constituting an unreasonable restraint on alienation regardless of the duration of the covenants or the amount of the transfer fees. The purpose of [sections 1 and 2] is to prohibit transfer fee covenants from running with the title to real property or binding subsequent owners of the property under common law or equitable principles.

Section 2. Transfer fee covenants — void. (1) A transfer fee covenant or any lien that is recorded or filed to enforce a transfer fee under a transfer fee covenant does not run with the title to real property and is not binding upon or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as a covenant, an equitable servitude, or otherwise.

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

(a) “Transfer” has the meaning provided in 70-1-501.

(b) “Transfer fee” means a fee or charge payable upon the transfer of legal or equitable title to an interest in real property regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. For purposes of this section, a transfer fee does not include the following:

(i) consideration payable by the transferee to the transferor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the transferee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind the original transferee’s successors in interest to the property;

(ii) a commission payable to a licensed real estate salesperson or broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission for the transfer payable by the transferor or the transferee based upon any subsequent appreciation, development, or sale of the property;

(iii) interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage, deed of trust, trust indenture, or other security interest against real property, including but not limited to a fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or other security interest, fees, or charges payable to the lender;

(iv) consideration payable by a buyer under a contract for deed as a condition of allowing a buyer to acquire equitable title to the real property described in the contract for deed;

(v) any fee, charge, assessment, dues, contribution, or other amount payable to:

(A) an association of unit owners as defined in 70-23-102, or any association of homeowners, mobile home owners, townhouse owners, or other property owners created pursuant to a recorded declaration that has the power to require owners to pay the costs and expenses incurred in the performance of the association’s obligations; or

(B) a nonprofit corporation as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3), 501(c)(4), or 528 of the Internal Revenue Code.

(c) "Transfer fee covenant" means a covenant or declaration recorded or filed against the title to real property that requires the payment of a transfer fee to the declarant or other person specified in the covenant or declaration or to the declarant's or other person's successors or assigns upon each subsequent transfer of a legal or equitable interest the real property.

(3) This section does not apply to any easement granted pursuant to Title 77.

Section 3. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522, and [section 2], every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; and

(b) conservation easements pursuant to 76-6-209.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [sections 1 and 2].

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

Section 6. Applicability. [This act] applies to transfer fee covenants filed on or after [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 260

[SB 218]

AN ACT ESTABLISHING PROCEDURES FOR SAMPLING PLANTS PROTECTED BY PATENT OR OTHER INTELLECTUAL PROPERTY LAWS; ALLOWING CONFIDENTIALITY; REQUIRING MEDIATION OF CLAIMS INVOLVING PROTECTED PLANTS; PROVIDING AN EXCEPTION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) the production of diverse agricultural crops is critical to the economic stability of Montana;

(b) Montana's agricultural companies and producers strive to operate their companies and grow their crops pursuant to generally accepted farming principles and practices;

(c) agricultural companies and producers in Montana are responsible for operating their businesses in a cooperative manner with their neighbors;

(d) the ability of Montana's growers to continue to compete in an expanding worldwide market is dependent upon access to a variety of crops that are resistant to diseases and pests;

(e) Montana's arid climate necessitates the development of types of crops that are drought-tolerant; and

(f) science has been a critical part of agriculture since its inception.

(2) The purpose of [sections 1 through 6] is to provide an orderly process to be followed when an intellectual property claim related to plants arises.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Grower" means the person responsible for planting and managing a crop on land where infringement of an intellectual property right is suspected to have occurred.

(2) "Person" means an individual, firm, association, corporation, partnership, the state, a subdivision of the state, or any other form of business enterprise.

(3) "Protected plant" means any plant part or material, including but not limited to seeds and genetic traits, that is patented by the U.S. patent and trademark office or protected under the federal Plant Variety Protection Act, 7 U.S.C. 2321, et seq., or any other intellectual property protection recognized by federal law.

Section 3. Suspected violations — sampling procedures — confidentiality. (1) When an intellectual property owner or that person's agent makes a claim that a grower has planted, grown, or retained seed or any other plant part from a protected plant in violation of the intellectual property rights of another person, the claimant shall:

(a) request permission from the grower to enter the grower's land for the purpose of sampling;

(b) notify the grower that the grower may ask that the sampling be done by the department; and

(c) notify the department that a claim is being made.

(2) If the grower withholds permission to enter the grower's land or refuses to be present for sampling at a reasonable time and place, the claimant may petition a court for permission to enter the grower's land and [section 4(8)] applies.

(3) (a) A court may grant an order allowing a claimant to enter the property if the court determines the sampling effort to be:

(i) minimally invasive;

(ii) minimally disruptive; and

(iii) reasonably based on information sufficient to support an inspection.

(b) The court may order the claimant to pay for any physical damages caused during the process of sampling.

(4) (a) When sampling is conducted, the grower and the claimant both have the right to be present if both the grower and the claimant have made a good faith effort to be present at a reasonable time and place.

(b) A department representative must be present during sampling if the department's presence is requested by either the grower or the claimant.

(c) The department may perform the sampling if asked to do so by the claimant or the grower. The department shall charge a fee that covers the costs of providing the sampling service. The fee may not exceed other seed-related sampling fees charged by the department.

(5) Costs associated with sampling must be paid by the claimant unless:

(a) both parties agree to a different assignment of costs through a contractual or settlement agreement; or

(b) a different allocation is ordered through mediation or court order.

(6) (a) The grower or the claimant may request that an independent laboratory confirm the presence of a protected plant in the samples taken. If the department took the sample, the department shall select an independent and qualified laboratory to conduct the requested laboratory services.

(b) Costs associated with the laboratory services must be paid by the entity making the request unless:

(i) both parties agree to a different assignment of costs through a contractual agreement or settlement agreement; or

(ii) a different allocation is directed through mediation or court order.

(7) The results of any sampling and laboratory services conducted pursuant to this section must be sent to the grower and the claimant by certified mail within 30 days.

(8) The results of all sampling and testing are confidential unless both the grower and the claimant agree to make them public.

Section 4. Mediation required before judicial action. (1) Except as provided in subsection (8), a claimant shall seek mediation before seeking judicial relief regarding a claim that a grower has planted, grown, or retained seed or any plant part from a protected plant in violation of the intellectual property rights of another person.

(2) The claimant shall notify the grower by certified mail and shall also advise the department of the intellectual property claim.

(3) (a) A mediator chosen pursuant to this section must:

(i) be selected and agreed upon by the claimant and the grower;

(ii) be an attorney; and

(iii) possess the necessary skills and qualifications to be a mediator.

(b) Preference must be given to attorneys with experience in intellectual property claims.

(4) (a) The department shall maintain a list of qualified mediators willing to perform mediation under [sections 1 through 6]. Both parties to an action may suggest names of a mediator as soon as the grower and the department are notified of the claim. The parties are not limited to using mediators from the department's list.

(b) The parties shall exercise good faith and diligence in selection of the mediator. If the parties exercise good faith and diligence and are unable to agree upon a mediator within 90 days of notice to the grower, either party may seek judicial relief.

(5) (a) The selected mediator shall schedule mediation to begin within 30 days at a location agreeable to both parties. The parties shall conclude mediation within 30 days of commencement of mediation unless the parties agree to a longer mediation period.

(b) The parties shall share equally in the costs of the mediator and mediation unless a different cost-sharing arrangement is agreed to by the parties.

(6) A mediation that results in agreement between the claimant and the grower must be documented by the mediator and signed by an authorized representative of each party. The mediator shall retain an original copy of the signed agreement. The agreement is binding upon the claimant and the grower.

(7) The deliberations and the outcome of the mediation may not be made public unless agreed to by the grower and the claimant.

(8) The requirement for mediation does not apply to a claimant seeking judicial relief to conduct sampling pursuant to [section 3] and may not be used to delay the ability of a claimant or grower to obtain samples. An action filed to secure evidence following a grower's refusal to allow entry does not violate the mediation requirements of this section.

Section 5. Venue. If a contract between a grower and a claimant of an intellectual property right violation is silent with regard to venue for any legal proceedings regarding intellectual property rights, venue must be in the district court for the district in which the alleged intellectual property right violation occurred.

Section 6. Rulemaking. The department shall adopt rules for the purposes of implementing [sections 1 through 6]. The rules must include but are not limited to:

(1) the procedure for requesting the department's presence during sampling;

(2) the fees to be charged for the department's attendance and sampling services;

(3) notification procedures related to the mandatory mediation process; and

(4) a sampling protocol that provides that:

(a) the standards used for the field sampling and laboratory tests meet minimum standards as requested by the claimant; and

(b) samples must be submitted for testing within 10 days of the date of sampling.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 through 6].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 261

[SB 219]

AN ACT REVISING THE PROVISIONS RELATED TO ACCESS TO PROTESTED PROPERTY TAXES; REVISING THE PROVISIONS RELATED TO A SCHOOL DISTRICT'S ELECTION ON WHETHER TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT

THE ELECTION APPLIES ONLY TO CENTRALLY ASSESSED PROPERTY AND INDUSTRIAL PROPERTY THAT IS ASSESSED ANNUALLY BY THE DEPARTMENT; ALLOWING LOCAL TAXING JURISDICTIONS TO ACCESS PROTESTED TAXES OF CENTRALLY ASSESSED INDUSTRIAL PROPERTY; REVISING THE CALCULATION OF GUARANTEED TAX BASE AID FOR A DISTRICT THAT ELECTS TO WAIVE ITS RIGHT TO RECEIVE ITS PORTION OF CENTRALLY ASSESSED PROTESTED TAXES; AMENDING SECTIONS 15-1-402, 15-1-409, AND 20-9-366, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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

Section 1. Section 15-1-402, MCA, is amended to read:

“15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to *Title 15*, chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing

jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes *on industrial property that is annually assessed by the department* in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv).

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-108 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 *or on industrial property that is assessed annually by the department* in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of ~~subsections (5)(a) and~~ *subsection (5)(b)* do not apply to a school district that has elected to waive its right to its portion of protested taxes *on centrally assessed property and on industrial property that is assessed annually by the department* for that specific year as provided in 15-1-409.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest

fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the department shall pay the remainder of the refund from the state general fund.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-108.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final

resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed.”

Section 2. Section 15-1-409, MCA, is amended to read:

“15-1-409. Exclusion of certain property subject to property tax protest — guarantee tax base — tax refund. (1) A school district that has *centrally assessed* property subject to pending property tax protests shall, prior to February 1 of each year, elect whether to waive the school district’s right to receive its portion of protested taxes *under 15-1-402(5)(b)* for the previous year.

(2) If the school district elects to waive its right to its portion of the protested taxes *under subsection (1)*, the district’s guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable value of property in the school district ~~that is not subject to a tax protest less the taxable value of the centrally assessed property for which a school district waived its right to receive its portion of protested taxes.~~ Upon settlement or other resolution of the protest, the department is responsible for refunding protested taxes or paying any other costs due the protesting taxpayer and retaining any portion of protested taxes that would have been distributed to the school district for each year the school district has elected to waive receiving its portion of the protested taxes.

(3) *For the purpose of this section, “centrally assessed property” means property that is centrally assessed pursuant to 15-23-101 and industrial property that is assessed annually by the department.*”

Section 3. Section 20-9-366, MCA, is amended to read:

“20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) “County retirement mill value per elementary ANB” or “county retirement mill value per high school ANB” means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts’ and high school districts’ current year total per-ANB entitlement amounts.

(2) (a) “District guaranteed tax base ratio” for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district, except for property *value disregarded because of protested taxes under 15-1-409(2) or property* subject to

the creation of a new school district under 20-6-326, divided by the sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 193% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 and 3] are effective October 1, 2011.

Section 5. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

(2) [Sections 2 and 3] apply to tax years beginning after December 31, 2011.

Approved April 21, 2011

CHAPTER NO. 262

[SB 242]

AN ACT REVISING WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF "EMPLOYEE" WITH RESPECT TO AGRICULTURE EMPLOYMENT; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-71-118, MCA, is amended to read:

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

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by

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

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

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

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

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

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

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

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

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

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's

training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

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

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

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

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

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

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

(e) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

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

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

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

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

proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

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

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

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

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

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

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

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

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

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

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum

wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

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

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

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

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

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

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

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

- (i) nonresident employees are hired in Montana;
- (ii) nonresident employees' wages are paid in Montana;
- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

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

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 263

[SB 246]

AN ACT CLARIFYING THE PETITION PROCESS OF A REGULATED TELECOMMUNICATION SERVICES PROVIDER FOR SUBMITTING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; ELIMINATING CERTAIN REQUIREMENTS ASSOCIATED WITH A PROPOSED ORDER MODIFYING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; AMENDING SECTION 69-3-809, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 69-3-809, MCA, is amended to read:

“69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission’s order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest;

(f) will enhance economic development in the state;

(g) will result in the improvement of the telephone infrastructure in the state; and

(h) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

~~(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:~~

~~(a) remains subject to the same regulation that applied when the petition was filed; and~~

~~(b) may petition the commission to be regulated under a revised alternative plan.~~

~~(5)(4)~~ Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

~~(6)(5)~~ Nothing contained in this section may be construed as limiting or otherwise affecting the commission’s authority to conduct investigations or hear complaints as provided in part 3 of this chapter.”

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

Approved April 21, 2011

CHAPTER NO. 264

[SB 285]

AN ACT REQUIRING THE MONITORING OF CARBON DIOXIDE INJECTION WELLS FOR 50 YEARS UNLESS AN ALTERNATIVE TIMEFRAME IS APPROVED BY THE BOARD OF OIL AND GAS CONSERVATION; REQUIRING AN OPERATOR TO CONTINUE TO ACCEPT LIABILITY FOR A CARBON DIOXIDE STORAGE RESERVOIR AND THE STORED CARBON FOR A MINIMUM OF 30 YEARS; AMENDING SECTION 82-11-183, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the federal Environmental Protection Agency has adopted federal requirements under the underground injection control program for carbon dioxide geologic sequestration wells that require minimum monitoring timeframes with an opportunity for alternative timeframes; and

WHEREAS, the Board of Oil and Gas Conservation in consultation with the Department of Environmental Quality and the Department of Natural Resources and Conservation intends to seek primacy from the Environmental Protection Agency to implement the federal requirements for carbon dioxide geologic sequestration wells in Montana.

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

Section 1. Section 82-11-183, MCA, is amended to read:

“82-11-183. (Effective on occurrence of contingency) Certificate of completion — department of environmental quality participation — transfer of liability. (1) Pursuant to subsection (3), after carbon dioxide injections into a reservoir end and upon completion of the certification requirements pursuant to subsections (4) and (5), the board shall issue the geologic storage operator a certificate of project completion.

(2) The board:

(a) shall adopt rules pursuant to 82-11-111 necessary for implementing subsection (4) of this section, including rules for public notice and hearing; and

(b) may, pursuant to 82-11-111, adopt any other rules necessary for administration of this section.

(3) ~~The~~ *Except as provided in subsection (11),* the certificate may not be issued until at least ~~15~~ 25 years after carbon dioxide injections end.

(4) Subject to subsection (5), the certificate may be issued only if the geologic storage operator:

(a) is in full compliance with regulations governing the geologic storage reservoir pursuant to this part;

(b) shows that the geologic storage reservoir will retain the carbon dioxide stored in it;

(c) shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity;

(d) shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the board;

(e) shows that the carbon dioxide in the geologic storage reservoir has become stable, which means that it is essentially stationary or chemically combined or, if it is migrating or may migrate, that any migration will not cross the geologic storage reservoir boundary; and

(f) *except as provided in subsection (11),* shows that the geologic storage operator will continue to provide adequate bond or other surety after receiving

the certificate of completion for at least ~~15~~ 25 years following issuance of the certificate of completion and that the operator continues to accept liability for the geologic storage reservoir and the stored carbon dioxide.

(5) (a) Prior to issuing a certificate of completion, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(b) Notwithstanding subsection (5)(a), the board makes the final decision on issuance of the certificate.

(6) ~~After~~ *Except as provided in subsection (11), after* issuing a certificate of completion, the board shall ensure adequate monitoring by the operator of the wells and reservoir, verifying compliance with subsection (4), for a period of ~~15~~ 25 years.

(7) (a) Following the monitoring and verification required in subsection (6) and subject to subsections (7)(b) and (7)(c), if the geologic storage operator has title to the geologic storage reservoir and the stored carbon dioxide, the geologic storage operator may transfer title to the geologic storage reservoir and to the stored carbon dioxide to the state.

(b) Prior to a transfer of title, the monitoring pursuant to subsection (6) must show that:

(i) the reservoir and wells are in full compliance with regulations pursuant to this part; and

(ii) the reservoir will maintain its structural integrity and will not allow carbon dioxide to move out of one stratum into another or pollute drinking water supplies.

(c) (i) Prior to a transfer of title, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(ii) The board shall make a recommendation to the board of land commissioners as to whether title should transfer to the state.

(iii) Notwithstanding subsections (7)(c)(i) and (7)(c)(ii), the board of land commissioners shall make the final decision on the transfer of title.

(8) If liability is transferred pursuant to subsection (7):

(a) title is transferred, without payment or any compensation, to the state;

(b) title acquired by the state includes all rights and interests in and all responsibilities associated with the geologic storage reservoir and the stored carbon dioxide;

(c) the geologic storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements and liability associated with the geologic storage reservoir and the stored carbon dioxide;

(d) any bonds or other surety posted by the geologic storage operator must be released; and

(e) monitoring and managing the geologic storage reservoir and the stored carbon dioxide is the state's responsibility to be overseen by the board until the federal government assumes responsibility for the long-term monitoring and management of geologic storage reservoirs and stored carbon dioxide.

(9) (a) If the operator does not transfer title to the state pursuant to subsection (7), the operator indefinitely accepts liability, except as provided in subsection (10), for the stored carbon dioxide and the geologic storage reservoir.

(b) If the operator is found not to be in compliance with subsection (7)(b), the operator retains liability until the operator is able to meet the requirements.

(10) After receiving a certificate of completion, every ~~15~~ 25 years after completing the monitoring and verification required by subsection (6), an operator may petition the board and request to transfer liability to the state and be released from liability pursuant to subsection (8). An operator who petitions the board pursuant to this subsection (10) may not request that the fee required by 82-11-181(1) or 82-11-184(2)(b) be remitted.

(11) (a) *The board, in consultation with the appropriate federal agencies, the department of environmental quality, and the department of natural resources and conservation, may adopt rules allowing for compliance with the requirements of this part in a period of time of less than 50 years.*

(b) *The rules must:*

(i) *ensure compliance with monitoring and verification requirements; and*

(ii) *ensure that an operator provides an adequate bond or other surety and accepts liability for the geologic storage reservoir and the stored carbon for a period of at least 30 years before transferring liability to the state pursuant to subsection (7)."*

Section 2. Contingent effective date. [This act] is effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009.

Approved April 21, 2011

CHAPTER NO. 265

[SB 288]

AN ACT ALLOWING ASSESSMENTS OF A SPECIAL DISTRICT TO BE APPEALED TO THE ADMINISTRATIVE BOARD OF THE DISTRICT; AND AMENDING SECTION 7-11-1027, MCA.

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

Section 1. Section 7-11-1027, MCA, is amended to read:

"7-11-1027. Payment of assessment under protest — action to recover. (1) (a) When an assessment made under this part is considered ~~unlawful~~ *erroneous* by the party whose property is charged or from whom the payment is demanded, the person may:

(i) *prior to the assessment becoming delinquent, file an appeal to the administrative board of the district; or*

(ii) *pay the assessment or any part of the assessment considered to be ~~unlawful~~ erroneous under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment, and either file an appeal to the administrative board of the district or initiate action in court as provided in subsection (2).*

(b) (i) *If an appeal is filed before the administrative board and the board finds in favor of the taxpayer, the board shall order the assessment, or the contested portion of the assessment, removed and if the payment was made under protest, it must be refunded by the county treasurer, city treasurer, or town clerk.*

(ii) *If an appeal is filed before the administrative board and the board does not find in favor of the taxpayer and if a payment was made under protest or the taxpayer makes a payment under protest before the assessment becomes delinquent, the taxpayer may initiate an action in court as provided in subsection (2).*

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment.

(4) If the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(5) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment."

Approved April 21, 2011

CHAPTER NO. 266

[SB 357]

AN ACT PROHIBITING A RESIGNING MEMBER OF A BOARD OF COUNTY COMMISSIONERS FROM PARTICIPATING IN FILLING THE VACANCY TO BE CREATED BY THE RESIGNATION; AMENDING SECTIONS 2-16-501 AND 7-4-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-16-501, MCA, is amended to read:

"2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;

- (3) resignation of the incumbent *becoming effective*;
- (4) removal of the incumbent from office;
- (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;
- (6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness, when absent from the state by permission of the legislature, or as provided in 10-1-1008;
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;
- (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time prescribed;
- (10) the decision of a competent tribunal declaring void the incumbent's election or appointment."

Section 2. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners — *resigning member not to participate in filling pending vacancy.* (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county.

(6) *If a member of the board of county commissioners has submitted the member's resignation as provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that member may not be considered to be a remaining member of the commission as provided in this section and may not participate in filling the vacancy to be created when the resignation becomes effective."*

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

Approved April 21, 2011

CHAPTER NO. 267

[SB 367]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE INDIVIDUAL, GENERAL, AND ALTERNATIVE NUTRIENT STANDARDS VARIANCES TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ALLOWING INFORMATION RELATED TO BASE NUMERIC NUTRIENT STANDARDS OR NUTRIENT STANDARDS VARIANCES TO BE CONFIDENTIAL; AND AMENDING SECTIONS 75-5-103, 75-5-105, AND 75-5-313, MCA.

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

Section 1. Section 75-5-103, MCA, is amended to read:

“75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Associated supporting infrastructure” means:

- (a) electric transmission and distribution facilities;
- (b) pipeline facilities;
- (c) aboveground ponds and reservoirs and underground storage reservoirs;
- (d) rail transportation;
- (e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) “Base numeric nutrient standards” means numeric water quality standards ~~standards~~ *criteria* for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) “Board” means the board of environmental review provided for in 2-15-3502.

(4) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) “Council” means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) “Currently available data” means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) “Degradation” means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(9) “Disposal system” means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "*Nutrient standards variance*" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(22)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of ~~temporary nutrient criteria~~ *nutrient standards variances*, and the implementation of those standards and ~~criteria~~ *variances* together with associated economic impacts.

~~(23)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(24)~~(25) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(25)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(26)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(27)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(28)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(29)~~(30) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to

public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(30)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(31)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(32)~~(33) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(33)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(34)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.~~

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions.

Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

- (a) electric transmission and distribution facilities;
- (b) pipeline facilities;
- (c) aboveground ponds and reservoirs and underground storage reservoirs;
- (d) rail transportation;
- (e) aqueducts and diversion dams;
- (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
- (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality standards *criteria* for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can

occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "*Nutrient standards variance*" means *numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.*

(22)(23) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of ~~temporary nutrient criteria~~ *nutrient standards variances*, and the implementation of those standards and ~~criteria~~ *variances* together with associated economic impacts.

(23)(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(24)(25) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(25)(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(26)(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(27)(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(28)(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(29)(30) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, is not pollution and does not require a mixing zone.

~~(30)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(31)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(32)~~(33) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(33)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(34)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.~~

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) “Total maximum daily load” or “TMDL” means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) “Treatment works” means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) “Waste load allocation” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources.

(40) “Water quality protection practices” means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) “Water well” means an excavation that is drilled, cored, bored, washed, driven, dug, jettied, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) “Watershed advisory group” means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.”

Section 2. Section 75-5-105, MCA, is amended to read:

“75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. ~~The~~ *Except as provided in [section 4], the* data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section.”

Section 3. Section 75-5-313, MCA, is amended to read:

“75-5-313. ~~Temporary nutrient criteria~~ Nutrient standards variances — individual, general, and alternative. (1) The department ~~may~~ *shall*, on a case-by-case basis, approve the use of ~~temporary nutrient criteria~~ *an individual nutrient standards variance* in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, ~~or the~~ limits of technology, ~~or both~~.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines *for individual nutrient standards variances* to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana, *acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.* ~~and may also consider relevant guidance of the United States environmental protection agency pertaining to analysis of economic impacts from water quality standards.~~

~~(b) In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger, the department may approve temporary nutrient criteria based upon a finding that the limits of technology preclude the attainment of the base numeric nutrient standards. The department's determination that the limits of technology justify temporary nutrient criteria must be based on available and proven treatment technologies at the time the temporary nutrient criteria are approved.~~

~~(e)(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards or criteria to the board and shall continue to consult with the nutrient work group in implementing temporary nutrient criteria individual nutrient standards variances.~~

(3) The department shall review each application for ~~temporary nutrient criteria~~ *an individual nutrient standards variance* on a case-by-case basis to determine if there are reasonable alternatives, such as trading, ~~or permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11),~~ that preclude the need for the ~~temporary criteria individual nutrient standards variance.~~

(4) ~~(a) Temporary nutrient criteria~~ *Individual nutrient standards variances* approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

~~(b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be reviewed by the department every 5 years from the date of adoption to ensure that the justification for their adoption is still valid.~~

(5) (a) *Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.*

(b) *The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:*

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly

average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on [the effective date of this act].

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(e)(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient standards, ~~temporary nutrient criteria~~ the nutrient standards variances, and implementation of those ~~criteria~~ standards and variances, including estimated economic impacts.

(d)(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection (4)(e) (12) to the environmental quality council in accordance with 5-11-210.”

Section 4. Confidentiality of base numeric standards and nutrient standards variances. (1) Except as provided in 80-15-108 and subsection (2) of this section, information concerning base numeric nutrient standards or nutrient standards variances that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use.

(2) Information unique to the owner or operator of a source of a discharge related to base numeric nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a court of competent jurisdiction.

(3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential.

(b) The department must be served in the action and may intervene as a party.

(c) Information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 4].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 2011

CHAPTER NO. 268

[SB 374]

AN ACT REVISING LAWS RELATED TO CANDIDATES FOR PRECINCT COMMITTEE REPRESENTATIVES OF EACH PARTY; CLARIFYING THE PROCESS FOR FILLING A VACANCY IN A PRECINCT COMMITTEE POSITION; AND AMENDING SECTION 13-38-201, MCA.

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

Section 1. Section 13-38-201, MCA, is amended to read:

“13-38-201. Election of committee representatives at primary — vacancies. (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for *precinct* committee representative by a ~~written statement~~ *declaration of nomination*, signed by the elector, notarized, and filed in the office of the ~~registrar~~ *county election administrator* within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

~~(4) If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's committee representative positions.~~

~~(4) If the number of candidates nominated for a party's precinct committee representatives is less than or equal to the number of positions to be elected, the election administrator may give notice that a party's precinct committee election will not be held in that precinct.~~

~~(5) If a party precinct committee election is not held pursuant to subsection (4), the election administrator shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to the designated party.~~

~~(6) Write-in votes for precinct committee representatives may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1).~~

~~(7) Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled by the party governing body as provided in its rules."~~

Approved April 21, 2011

CHAPTER NO. 269

[SB 413]

AN ACT CLARIFYING THE DUE DATE OF INDIVIDUAL INCOME TAX RETURNS AND CORPORATION LICENSE OR INCOME TAX RETURNS WHEN THE DUE DATE OF THE RETURN FALLS ON CERTAIN FEDERAL HOLIDAYS OR FEDERALLY DECLARED DISASTERS NOT OBSERVED IN MONTANA; AMENDING SECTIONS 15-30-2504, 15-30-2512, 15-30-2604, 15-30-3302, 15-31-101, 15-31-111, 15-31-141, AND 15-31-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-30-2504, MCA, is amended to read:

"15-30-2504. Schedules for remitting income withholding taxes — records. (1) ~~Each~~ *Subject to the due date provision in 15-30-2604(1)(b)*, an employer shall remit the taxes withheld from employee wages as follows:

(a) An employer whose total liability for state income tax withholding during the preceding lookback period was \$12,000 or more shall remit on an

“accelerated schedule”, which is the same as the employer’s federal due dates for federal tax deposits.

(b) An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$12,000 but more than \$1,199 shall remit on a “monthly schedule” for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 shall remit on an “annual schedule” for which the remittance due date is on or before February 28 of the year following payment of wages.

(d) An employer who has no withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.

(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).

(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers’ remittance schedules for the following calendar year based upon the department’s review of the preceding lookback period.

(4) A new employer or an employer with no filing history is subject to the monthly remittance schedule in subsection (1)(b) until the department is able to determine the employer’s proper remittance schedule by a review of the employer’s first complete lookback period.

(5) An employer may elect to remit payments on a more frequent basis than is required by subsection (1).

(6) An employer may use alternative remittance methods in conjunction with the department’s electronic remittance program in accordance with department rules.

(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(8) Each employer shall keep accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer’s expense.”

Section 2. Section 15-30-2512, MCA, is amended to read:

“15-30-2512. Estimated tax — payment — exceptions — interest.

(1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-2502, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual’s tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than \$500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) ~~For~~ *Subject to the due date provision in 15-30-2604(1)(b)*, for each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) ~~For~~ *Subject to the due date provision in 15-30-2604(1)(b)*, for each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest on the amount of the underpayment as provided in 15-1-216. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each a married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-2101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 3. Section 15-30-2604, MCA, is amended to read:

“15-30-2604. Time for filing — extensions of time. (1) (a) *Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer’s fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year.*

(b) (i) *If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.*

(ii) *The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.*

(2) ~~Each~~ *The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There An affidavit or affirmation must be attached to the return the affidavit or affirmation of from the persons making the return to the effect verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any the taxpayer of the obligation to make any a return required under this chapter. Each A taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.*

~~(2)(3)~~ (a) Subject to subsections ~~(2)(b)~~ (3)(b) and ~~(2)(e)~~ (3)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer’s return of up to 6 months following the date prescribed for filing of the tax return.

(b) On or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year’s tax liability or 100% of the previous year’s tax liability.

(c) The remaining tax, penalty, and interest of the current year’s tax liability not paid under subsection ~~(2)(b)~~ (3)(b) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

~~(3)(4)~~ The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

~~(4)(5)~~ The extension of time for filing a return is not an extension of time for the payment of taxes.”

Section 4. Section 15-30-3302, MCA, is amended to read:

“15-30-3302. Income or license tax involving pass-through entities — information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes

provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

(5) (a) *Subject to the due date provision in 15-30-2604(1)(b)*, a partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) ~~An~~ *Subject to the due date provision in 15-30-2604(1)(b)*, an S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 5. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, ~~every~~ a corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding ~~taxable tax~~ year at the rate set forth in this chapter. ~~In the case of corporations having~~ *If a corporation has* income from business activity ~~which that~~ *that* is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502 and subject to the due date provision in 15-31-111(2)(b), ~~this~~ *the* tax is due and payable on the 15th day of the 5th month following the close of the ~~taxable tax~~ year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the ~~taxable tax~~ year in which the income was earned and is for the privilege of carrying on business in this state for the ~~taxable tax~~ year in which the income was earned.

(4) ~~Every~~ A bank organized under the laws of the state of Montana, of any other state, or of the United States and ~~every~~ a savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For ~~taxable tax~~ years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 6. Section 15-31-111, MCA, is amended to read:

“15-31-111. Return to be filed — penalty and interest. (1) ~~Each~~ A corporation subject to the license tax imposed under this chapter shall for each tax period file an accurate return of its net income for the tax period in the manner and form prescribed by the department. The return must contain all of the information that is appropriate and in the opinion of the department necessary to determine the correctness of the net income disclosed by the return and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) (a) ~~If~~ *Except as provided in subsection (2)(b), if* the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(b) (i) *If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.*

(ii) *The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.*

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders.”

Section 7. Section 15-31-141, MCA, is amended to read:

“15-31-141. Consolidated returns — computation and procedure — penalty and interest. (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a “unitary business operation” means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) A corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. A corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) If an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its tax period in which its income is not included in the consolidated return of the group. *The Subject to the due date provision in 15-31-111(2)(b), the separate return must be filed no later than the 15th day of the 5th month following the close of the tax period for which a consolidated return of the affiliated group is filed.*

(b) (i) A corporation is allowed an automatic extension of time for filing its tax return of up to 6 months following the date prescribed for filing its return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists.”

Section 8. Section 15-31-502, MCA, is amended to read:

“15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments. (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit the amount to the department of revenue on or before the 15th day of the 5th month following the close of the ~~taxable~~ tax period.

(2) (a) ~~Each~~ A corporation shall make estimated tax payments if its annual estimated tax is \$5,000 or more. *The Subject to the due date provision in 15-31-111(2)(b), the estimated payments must be made in installments, as follows, if the \$5,000 threshold is met or exceeded:*

(i) For a corporation taxed on a calendar-year basis:

For the following required installments the due date is:

1st
2nd

April 15
June 15

3rd

September 15

4th

December 15

(ii) For a corporation taxed on a fiscal-year basis:

For the following required installments the due date is:

1st	15th day of the 4th month
2nd	15th day of the 6th month
3rd	15th day of the 9th month
4th	15th day of the 12th month

(b) Except as provided in 15-31-510, the amount of any required installment is 25% of the required annual payment. The required annual payment is the lesser of:

(i) 80% of the tax shown on the return for the ~~taxable~~ tax year or, if a return is not filed, 80% of the tax for that year; or

(ii) 100% of the tax shown on the return of the corporation for the preceding ~~taxable~~ tax year if the preceding ~~taxable~~ tax year was a period of 12 months and if the corporation filed a return for that year.

(3) The application of this section to ~~taxable~~ tax years of less than 12 months must be in accordance with rules adopted by the department.

(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.”

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010.

Approved April 21, 2011

CHAPTER NO. 270

[HB 188]

AN ACT GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AND AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA.

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

Section 1. Section 37-54-102, MCA, is amended to read:

“37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Professional Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Appraisal” means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

(2) “Appraisal foundation” means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title

XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) *“Appraisal management company” means, in connection with valuation of properties collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.*

(4) *“Appraisal management services” means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer’s principal dwelling:*

(a) *administering an appraiser panel;*

(b) *recruiting, retaining, or selecting appraisers to be part of an appraisal panel;*

(c) *qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;*

(d) *contracting with appraisers from the appraiser panel to perform appraisal assignments;*

(e) *receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;*

(f) *managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;*

(g) *tracking and determining the status of orders for appraisal assignments;*

(h) *conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and*

(i) *providing a completed appraisal report performed by an appraiser to one or more clients.*

(5) *“Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment. The term does not include a quality control examination.*

(6) *“Appraiser” means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.*

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly on a periodic basis as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

~~(2)~~(8) "Board" means the board of real estate appraisers provided for in 2-15-1758.

~~(3)~~(9) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

~~(4)~~(11) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~(12) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

~~(6)~~(13) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

(15) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors."

Section 2. Section 37-54-105, MCA, is amended to read:

"37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of processing an application for licensure and certification and renewal of a license or certificate;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;

(5) receive and review applications for licensure and certification and issue licenses and certificates;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to it;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers or *registered appraisal management companies*; and

(10) perform other duties necessary to implement this chapter.”

Section 3. Appraisal management company registration. (1) (a) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the board.

(b) An applicant for registration as an appraisal management company in this state shall submit an application to the board on forms prescribed by the department.

(c) If a registration process is not in effect on October 1, 2011, an appraisal management company already conducting business in this state may continue to conduct business in accordance with this chapter until 120 days after a registration process becomes available. Upon expiration of the 120-day period, the appraisal management company must be registered as required by this chapter in order to continue to provide or offer to provide appraisal management services in this state.

(2) An application for the registration required by subsection (1) must include the following information:

(a) the name of the person seeking registration and the fictitious name or names, if any, under which the person does business in any state;

(b) the business address of the person seeking registration;

(c) the phone contact information of the person seeking registration;

(d) if the appraisal management company is not a corporation domiciled in this state, the name and contact information for the company's designated contact for service of process in this state;

(e) the name, address, and contact information for one controlling person within the appraisal management company;

(f) a certification that the person has a system and process in place to verify that an individual holds a license in good standing in this state pursuant to 37-54-202 if a license or certification is required to perform appraisal assignments;

(g) a certification that the person requires appraisers completing appraisal assignments at its request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(h) a certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(i) a certification that the person has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act of 1968, 15 U.S.C. 1601, et seq., including the requirement that the fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(j) a certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal service for the appraisal management company;

(k) an irrevocable uniform consent to service of process; and

(l) any other information required by the board that is reasonably necessary to implement this chapter.

(3) An application for renewal of a registration must include information substantially similar to that required for the initial registration in subsection (2), as determined by the board.

(4) Renewals of registered appraisal management companies must be in accordance with 37-1-141. The department shall provide notice to an appraisal management company prior to the renewal date.

Section 4. Registration exemptions. (1) The provisions of this chapter do not apply to a person who exclusively employs appraisers on an employer-employee basis for the performance of an appraisal assignment.

(2) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency is not required to register with the board but shall comply with all provisions of this chapter, as long as the provisions of this chapter do not conflict with federal law related to the operation of an appraisal management company in this state.

Section 5. Owner requirements. (1) An appraisal management company applying for registration in this state may not be more than 10% owned by:

(a) a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated; or

(b) another entity that is more than 10% owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated.

(2) Each person who owns more than 10% of an appraisal management company in this state:

(a) must be of good moral character, as determined by the board; and

(b) shall submit to a background examination as determined by the board.

(3) Each appraisal management company applying for registration in this state shall certify to the board that it has reviewed each entity that directly owns more than 10% of the appraisal management company and that no entity that directly owns more than 10% of the appraisal management company is more than 10% directly owned by any person who has had a license or certificate to act

as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state.

Section 6. Contact individual. (1) Each appraisal management company shall designate one individual as the main contact for communication between the board and the appraisal management company. An appraisal management company may designate a controlling person of the company as the contact individual.

(2) The contact individual designated pursuant to subsection (1):

(a) must hold a license or certificate to act as an appraiser in at least one state;

(b) must not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated;

(c) must be of good moral character, as determined by the board; and

(d) shall submit to a background examination as determined by the board.

Section 7. Employee requirements. An appraisal management company may not:

(1) employ a person who may have any responsibility in ordering appraisal reports, providing quality control testing for appraisal reports, or communicating with appraisers regarding any potential appraisal report deficiencies who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated;

(2) enter into an independent contractor arrangement with a person who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated.

Section 8. Appraisal review. An employee or independent contractor of the appraisal management company that performs an appraisal review for a property located in this state:

(1) must be an appraiser licensed or certified in this state; and

(2) shall comply with the review provisions of the Uniform Standards of Professional Appraisal Practice.

Section 9. Mandatory reporting. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board.

Section 10. Limitations. An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or agreements with an individual for the performance of appraisals unless the company obtains verification that the individual is licensed or certified to perform appraisals pursuant to this chapter. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

Section 11. Certification to board — appraisal panel members. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company

has a system and process in place to verify that all appraisers on the appraisal panel of the appraisal management company are licensed or certified in this state pursuant to this chapter.

Section 12. Certification to board — continuing licensure. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company has a system in place to verify that an appraiser to whom the appraisal management company is making an assignment for the completion of an appraisal has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation since the last time that the appraisal management company made an assignment for an appraisal to the appraiser. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

Section 13. Certification — adherence to standards. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to perform on an annual basis an appraisal review of the work of all appraisers who are performing appraisals for the appraisal management company on a periodic basis to validate that the appraisals are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

Section 14. Audits. Upon renewal, not less than 10% of the appraisal management companies in this state must be subjected to a random audit. Audited appraisal management companies shall submit the recordkeeping documentation described in [section 15] for the 12-month period prior to renewal and any other documentation the board requests to validate compliance with this chapter. Any costs incurred by the board during an audit may be attributed to the appraisal management company.

Section 15. Recordkeeping. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has retained the following documentation in accordance with the recordkeeping provisions of the Uniform Standards of Professional Appraisal Practice and applicable state law:

(1) a full record as prescribed by the board that includes the names of the entities requesting service from the appraisal management company and the corresponding names of the appraisers that performed the appraisal services; and

(2) all certifications and supporting documentation for board registration and renewals, including audit reports required by this chapter.

Section 16. Appraiser independence — prohibitions. (1) An employee, director, officer, or agent of an appraisal management company registered in this state may not influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, or bribery or in any other manner, including but not limited to:

(a) withholding or threatening to withhold timely payment for an appraisal;

(b) withholding or threatening to withhold future business for an appraisal assignment or demoting or terminating or threatening to demote or terminate an appraiser;

(c) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(d) conditioning the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate or opinion requested from an appraiser;

(e) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

(f) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;

(g) providing stock or other financial or nonfinancial benefits to an appraiser or a person related to the appraiser;

(h) allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser; or

(i) performing any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(2) Subsection (1) may not be construed as prohibiting an appraisal management company from requesting that an appraiser:

(a) consider additional appropriate property information that falls within the original scope of work for that appraisal service;

(b) provide additional information about the basis for a valuation; or

(c) correct objective factual errors in an appraisal report.

Section 17. Guaranty of payment. Each appraisal management company registered in this state shall, except in cases of breach of contract, pay an appraiser for the completion of an appraisal or valuation assignment within 60 days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

Section 18. Alteration of appraisal report. An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser unless the alteration is mandated by federal laws, guidelines, or provisions. This section does not apply to the conversion of appraisal reports to data streams required by federal lending agencies.

Section 19. Registration. The department shall publish annually a list of appraisal management companies that have registered with the department pursuant to this chapter.

Section 20. Advertising. (1) An appraisal management company registered in this state shall disclose its registration number on its engagement letter for each appraisal assignment.

(2) An appraiser who completes work for an unregistered or suspended appraisal management company is subject to disciplinary action for unprofessional conduct. An appraiser shall list the appraisal management company's approved registration number in the body of the appraisal report.

Section 21. Unprofessional conduct. An appraisal management company engages in unprofessional conduct if it:

(1) requires an appraiser to modify any aspect of an appraisal report other than those items identified by a quality control examination, including items

that are found to be incomplete within the defined scope of work in the original assignment;

(2) requires an appraiser to prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the appraisal management company of the issue;

(3) requires an appraiser to prepare an appraisal report under a timeframe that the appraiser, in the appraiser's professional judgment, believes does not allow the appraiser to meet all relevant legal and professional obligations and the appraiser has notified the appraisal management company of the issue;

(4) prohibits or inhibits legal and allowable communication between the appraiser and:

(a) the lender;

(b) a real estate licensee; or

(c) any other person from whom the appraiser, in the appraiser's professional judgment, believes information would be relevant;

(5) requires the appraiser to do anything that does not comply with:

(a) the Uniform Standards of Professional Appraisal Practice; or

(b) assignment conditions and certifications required by the client;

(6) makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including but not limited to:

(a) a loan closing; or

(b) a specific dollar amount being achieved by the appraiser in the appraisal report.

Section 22. Codification instruction. [Sections 3 through 21] are intended to be codified as an integral part of Title 37, chapter 54, and the provisions of Title 37, chapter 54, apply to [sections 3 through 21].

Approved April 22, 2011

CHAPTER NO. 271

[HB 327]

AN ACT REVISING SCHOOL ADMINISTRATION LAWS; ESTABLISHING A WITHDRAWAL DATE FOR SCHOOL DISTRICT TRUSTEE ELECTIONS; PROVIDING WHO MAY ADMINISTER AN OATH OF OFFICE TO A SCHOOL DISTRICT TRUSTEE; CLARIFYING THE STATUS OF A SINGLE-MEMBER TRUSTEE DISTRICT AND A TRUSTEE NOMINATING DISTRICT IN AN ELECTION BY ACCLAMATION; REQUIRING TRUSTEES OF EACH DISTRICT TO ORGANIZE AS A GOVERNING BOARD NO LATER THAN 15 DAYS AFTER ELECTION DAY; CLARIFYING THE CALCULATION OF MAXIMUM ALLOWABLE INDEBTEDNESS FOR CERTAIN SCHOOL DISTRICTS; ELIMINATING REFERENCE TO AN INTEREST RATE ON SCHOOL DISTRICT BOND ELECTION BALLOTS; AMENDING SECTIONS 20-3-305, 20-3-307, 20-3-313, 20-3-321, 20-9-406, 20-9-426, 20-9-427, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-3-305, MCA, is amended to read:

“20-3-305. Candidate qualification, and nomination, and withdrawal. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy must be submitted to the clerk of the district not less than 40 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

(3) (a) *A candidate intending to withdraw from the election shall send a statement of withdrawal to the clerk of the district. The statement must contain all information necessary to identify the candidate and the office for which the candidate was nominated. The statement of withdrawal must be acknowledged by the clerk of the district.*

(b) *A candidate may not withdraw less than 38 days before a school election.*

(c) *Filing fees paid by the candidate may not be refunded.”*

Section 2. Section 20-3-307, MCA, is amended to read:

“20-3-307. Qualification and oath. (1) A person who receives a certificate of election as a trustee under the provisions of 20-3-313 or 20-20-416 may not assume the trustee position until the person has qualified. The person shall qualify by ~~completing and filing an oath of office with the county superintendent~~ *taking an oath of office administered by the county superintendent, the superintendent’s designee, or any official provided for in 1-6-101 or 2-16-116. The oath must be filed with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, the person holds the position until a successor has been elected or appointed and has been qualified.*

(2) *If the elected person does not qualify in accordance with this requirement, a person must be appointed in the manner provided by 20-3-309 and shall serve until the next regular election.”*

Section 3. Section 20-3-313, MCA, is amended to read:

“20-3-313. Election by acclamation — notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to or less than the number of positions to be elected, the trustees may give notice that a trustee election will not be held. Notice must be given no later than 25 days before the election.

(2) *If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.*

(3) *An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section.”*

Section 4. Section 20-3-321, MCA, is amended to read:

“20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular

election day and after the issuance of the election certificates to the newly elected trustees, but not later than ~~the third Saturday of May~~ *15 days after the election*. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.”

Section 5. Section 20-9-406, MCA, is amended to read:

“20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, and any other loans or notes payable that are held as general obligations of the district, is 50% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 ~~and 20-9-502~~, and any other loans or notes payable that are held as general obligations of the district, is up to 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 ~~and 20-9-502~~, and any other loans or notes payable that are held as general obligations of the district, is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 6. Section 20-9-426, MCA, is amended to read:

"20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.

(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.

(3) All ballots must be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation or impact aid revenue) bonds of this school district in the amount of dollars (\$), ~~bearing interest at a rate not more than percent (.....%) a year~~, payable semiannually, during a period not more than years, for the purpose (here state the purpose the same way as in the notice of election)?

- BONDS — YES.
- BONDS — NO.”

Section 7. Section 20-9-427, MCA, is amended to read:

“20-9-427. Notice of bond election by separate purpose. (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. of..... County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the..... day of.....,....., an election of the registered electors of School District No..... of..... County, state of Montana, will be held on the..... day of.....,....., at..... for the purpose of voting upon the question of whether or not the trustees may issue and sell (state here: general obligation or impact aid revenue) bonds of the school district in the amount of..... dollars (\$.....), ~~bearing interest at a rate not more than percent (.....%) a year~~, payable semiannually, for the purpose of..... (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding..... (state number) years.

The polls will be open from..... o'clockm. and until..... o'clockm. of the election day.

Dated and posted this..... day of.....

.....
Presiding officer, School District No.....
of..... County
Address.....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds or impact aid revenue bonds.”

Section 8. Section 20-9-428, MCA, is amended to read:

“20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) *If Except as provided in subsection (1)(c), if the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:*

- (i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is:

(i) 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise it is rejected;

(ii) more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise it is rejected; or

(iii) 30% or less, the school bond proposition is rejected.

(c) If the school district bond election is held at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for the school district bond election.”

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2011

CHAPTER NO. 272

[SB 135]

AN ACT AUTHORIZING THE USE OF CONTROLLED DOGS TO TRACK WOUNDED GAME ANIMALS; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-3-124, MCA, is amended to read:

“87-3-124. Dogs — restrictions on hunting — penalty for chasing hooved game animals — authorization for tracking wounded game animals. (1) (a) Except as provided in 87-3-127 and subsections (2) ~~and (3)~~ *through (4)* of this section, a person may not chase with a dog any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Except as provided in ~~subsection~~ *subsections (2) and (4)*, any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing hooved game animals may destroy that dog, on public land or on private land at the request of the landowner, without criminal or civil liability.

(d) Except as provided in ~~subsection~~ *subsections (2) and (4)*, a person who purposely, knowingly, or negligently permits a dog to chase, stalk, pursue,

attack, or kill hooved game animals is guilty of a misdemeanor and is subject to the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) A person may use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (1)(c).

(3) (a) A person may hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs.

(b) A person may hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs.

(c) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.

(4) (a) *A person with a valid hunting license issued pursuant to Title 87, chapter 2, may use a dog to track a wounded game animal during an appropriate open season. Any person using a dog in this manner:*

(i) shall maintain physical control of the dog at all times by means of a maximum 50-foot lead attached to the dog's collar or harness;

(ii) during the general season, whether handling or accompanying the dog, shall wear hunter orange material pursuant to 87-3-302;

(iii) may carry any weapon allowed by law;

(iv) may dispose of the wounded game animal using any weapon allowed by the valid hunting license; and

(v) shall immediately tag an animal that has been reduced to possession in accordance with 87-2-509.

(b) Dog handlers tracking a wounded game animal with a dog are exempt from licensing requirements under Title 87, chapter 2, as long as they are accompanied by the licensed hunter who wounded the game animal."

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

Approved April 22, 2011

CHAPTER NO. 273

[SB 138]

AN ACT RESTRICTING THE STATUTORY APPROPRIATION FROM THE GENERAL FUND FOR THE BOARD OF REGENTS' SHARE OF THE OPTIONAL RETIREMENT TO EMPLOYEES WHOSE COMPENSATION IS PAID FROM THE CURRENT UNRESTRICTED SUBFUND; AMENDING SECTION 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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 and total the amounts calculated.

(ii) The board 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 allocated under this subsection (1)(b)(ii) to each participant whose wages or salary and benefits are paid from the current unrestricted subfund as described in 17-2-102 are statutorily appropriated, as provided in 17-7-502, to the board of regents from the general fund.

(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 2. Coordination instruction. If both House Bill No. 138 and [this act] are passed and approved, House Bill No. 138 is void.

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 22, 2011

CHAPTER NO. 274

[SB 149]

AN ACT CREATING THE OFFENSE OF PREDATORY LOITERING APPLICABLE TO PERSONS PREVIOUSLY CONVICTED OF A SEXUAL OFFENSE; AND PROVIDING A PENALTY.

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

Section 1. Predatory loitering by sexual offender. (1) A person commits the offense of predatory loitering if the person:

(a) was previously convicted of a predatory sexual offense or sexual abuse of children;

(b) purposely or knowingly loiters:

(i) in the vicinity of a residence, school, church, or place of work of the person's previous victim; or

(ii) in the vicinity of any school, park, playground, church, bicycle or multiuse path, or other place frequented by minors of an age similar to the age of the victim of the previous sexual offense if the sexual offense concerned a minor; and

(c) has previously been requested by a person in authority to:

(i) leave the area in which the person loiters; or

(ii) leave any area in which the person has loitered.

(2) Proof of the offense of predatory loitering must also include proof that the person in authority has made a report of the request to the law enforcement agency with jurisdiction over the area, and the agency has documented the report.

(3) A person convicted of the offense of predatory loitering may be fined not more than \$500 or be imprisoned for not more than 6 months, or both. A person convicted of a second or subsequent offense of predatory loitering may be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both.

(4) As used in this section, the following definitions apply:

(a) "Person in authority" includes a peace officer or:

(i) for the purposes of a school or playground, a principal, teacher, school staff member, parent or other adult relative of a child attending the school or playground, or other supervisor of minors;

(ii) for the purposes of a church, a minister, priest, rabbi, deacon, or other ecclesiastical official, a church staff member, or a parent or other adult relative of a child attending the church;

(iii) for the purposes of a park, playground, or bicycle or multiuse path, a person specified in subsection (3)(a)(i) or a park warden, guard, or host; or

(iv) for purposes of a place of work, a person employed at the place of work.

(b) "Predatory sexual offense" has the meaning provided in 46-23-502.

(c) "Sexual abuse of children" means commission of the offense provided in 45-5-625.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [section 1].

Approved April 22, 2011

CHAPTER NO. 275

[SB 327]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE AND THE WATER POLICY INTERIM COMMITTEE ON FEASIBILITY STUDIES CURRENTLY

REQUIRED UNDER LAW TO ASSESS WATER PROJECTS OWNED OR CONTROLLED BY THE STATE FOR ELECTRICITY GENERATION POTENTIAL; CLARIFYING THE ECONOMIC FEASIBILITY CRITERIA THAT THE DEPARTMENT IS REQUIRED TO CONSIDER IN STUDYING PROJECTS; AMENDING SECTION 85-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-1-501, MCA, is amended to read:

“85-1-501. Survey of power generation capacity. (1) The department shall study the economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on each of the water projects under its control and shall periodically update ~~such~~ *those* studies as the cost of the electrical energy increases. In determining whether small-scale hydroelectric generation may be economically feasible on a particular project, the department shall consider:

- (1)(a) the estimated cost of construction of a facility;
- (2)(b) the estimated cost of maintaining, repairing, and operating the facility;
- (3)(c) the estimated cost of tying into an existing power distribution channel;
- (4)(d) the ability of public utilities or rural electric cooperatives to lease and operate such a facility;
- (5)(e) the debt burden to be serviced;
- (6)(f) the revenue expected to be derived; ~~and~~
- (7)(g) the likelihood of a reasonable rate of return on the investment; *and*
- (h) *the potential impacts on water supply and streamflows.*

(2) *Prior to September 1 of each even-numbered year, the department shall update the energy and telecommunications interim committee and the water policy interim committee on all past and current studies conducted pursuant to this section.”*

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

Approved April 22, 2011

CHAPTER NO. 276

[SB 382]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTAIN INFORMATION CONCERNING CENTRALLY ASSESSED PROPERTY TO TAXPAYERS.

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

Section 1. Taxpayer right to know — centrally assessed property.

(1) The department shall, in the course of valuing properties, post on its website 30 days prior to the issuance of current year assessment notices the capitalization rate or rates to be used by the department to determine the income indicators of value for centrally assessed property, including supporting information on capitalization studies. The supporting information must include the rationale for adding or deleting a company or property from those included in the study in the prior year.

(2) The department shall display a statement on its website that it will accept comments on the current year capitalization rates and information as

provided in subsection (1) for 20 days after posting. The department shall consider the comments prior to issuing the current year assessment notices and shall post a response to each written comment within 20 days of the close of the comment period.

(3) The department shall include all underlying computations when providing a taxpayer with a determination of valuation.

(4) If the department changes its reliance on any indicator of value by more than 15% from the previous year, the department shall provide the taxpayer with a written explanation of the rationale for the change when issuing an initial or final determination of valuation to a taxpayer.

(5) Nothing in this section may be construed as affecting an appraisal judgment.

(6) Inaccuracy or inadequacy of compliance with this section does not invalidate a determination of value or provide independent grounds for appeal.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

Approved April 22, 2011

CHAPTER NO. 277

[SB 389]

AN ACT ALLOWING A BREWERY TO IMPORT OR PURCHASE NECESSARY NONBEVERAGE INGREDIENTS CONTAINING ALCOHOL AS INGREDIENTS FOR BLENDING OR MANUFACTURING PURPOSES; REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH CONDITIONS FOR THE IMPORTATION OR PURCHASE; PROVIDING THAT THE NONBEVERAGE INGREDIENTS FOR USE BY A BREWERY AND DISTILLED SPIRIT INGREDIENTS FOR A DISTILLERY OR A MICRODISTILLERY ARE EXEMPT FROM STATE TAXES AND MARKUP; DECREASING THE MINIMUM ALCOHOL CONTENT APPLICABLE TO DISTILLERIES; AND AMENDING SECTIONS 16-1-401, 16-1-404, 16-3-214, AND 16-4-311, MCA.

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

Section 1. Section 16-1-401, MCA, is amended to read:

“16-1-401. Liquor excise tax. (1) *Except as provided in subsection (3),* the department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at a rate that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:

Nationwide production	Tax rate
Less than 20,000 proof gallons	3%
20,000 to 50,000 proof gallons	8%
50,001 to 200,000 proof gallons	13.8%
Over 200,000 proof gallons	16%

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 17-2-124, deposit, to the credit of the general fund, the amount collected and received not later than the 10th day of each month.

(3) *The following are exempt from the tax imposed by this section:*

(a) *flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a brewery under conditions set by the department as provided in 16-3-214; and*

(b) *necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions set by the department as provided in 16-4-311 and 16-4-312.”*

Section 2. Section 16-1-404, MCA, is amended to read:

“16-1-404. License tax on liquor — amount — distribution of proceeds. (1) *Except as provided in subsection (4),* the department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor produced in or brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 17-2-124, shall allocate the revenue as follows:

(a) Thirty-four and one-half percent is allocated to the state general fund.

(b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(3) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed as provided in 53-24-206.

(4) *The following are exempt from the tax and markup imposed by this section:*

(a) *flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a brewery under conditions set by the department as provided in 16-3-214; and*

(b) *necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions set by the department as provided in 16-4-311 and 16-4-312.”*

Section 3. Section 16-3-214, MCA, is amended to read:

“16-3-214. Beer sales by brewers — sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery to:

(i) a wholesaler;

(ii) licensed retailers if the brewer uses the brewer’s own equipment, trucks, and employees to deliver the beer and if:

(A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and

(B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or

(iii) the public;

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery’s product to the public or to licensed retailers.

(3) *A brewery may import or purchase, upon terms and conditions the department may require, necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.*

~~(3)~~(4) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

~~(4)~~(5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230.”

Section 4. Section 16-4-311, MCA, is amended to read:

“16-4-311. Distillery license. (1) The department may, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 17% 0.5% alcohol by weight volume for sale to the department or as provided in 16-4-312 and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department

may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in 16-4-312.

(2) An agricultural producer or association of agricultural producers or legal agents who manufacture and convert agricultural surpluses, byproducts, or wastes into denatured ethyl and industrial alcohol for purposes other than human consumption are not required to obtain a distillery license from the department.”

Approved April 22, 2011

CHAPTER NO. 278

[HB 618]

AN ACT ESTABLISHING PROPERTY TAX EXEMPTIONS FOR CERTAIN PROPERTY OWNED BY FEDERALLY RECOGNIZED INDIAN TRIBES; AMENDING SECTIONS 15-6-201, 41-3-201, 61-3-321, AND 61-10-214, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-6-201, MCA, is amended to read:

“15-6-201. Governmental, charitable, and educational categories — exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries;

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33; ~~and~~

(vii) special districts created pursuant to Title 7, chapter 11, part 10; *and*

(viii) *subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.*

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed

15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;

~~(e)~~(d) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

~~(d)~~(e) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

- (i) is not operated for gain or profit;
- (ii) has an attendance policy; and
- (iii) has a definable curriculum with systematic instruction;

(f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);

~~(e)~~(g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

~~(f)~~(h) property that is:

(i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; or

(B) *owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and*

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

~~(g)~~(i) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

~~(h)~~(j) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

~~(i)~~(k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

~~(j)~~(l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

~~(k)~~(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

~~(n)~~(i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

~~(m)~~(o) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection ~~(1)(m)~~ (1)(o), “nonprofit corporation” means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) (i) *For the purposes of tribal property under subsection (1)(a)(viii), the property subject to exemption may not be:*

(A) *operated for gain or profit;*

(B) *held under contract to operate, lease, or sell by a taxable individual;*

(C) *used or possessed exclusively by a taxable individual or entity; or*

(D) *held by a tribal corporation except for educational purposes as provided in subsection (1)(f).*

(ii) *For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must be:*

(A) *set aside by tribal resolution and designated as park land, not to exceed 15 acres, or be designated as a recreational facility; and*

(B) *open to the general public.*

~~(a)~~(b) For the purposes of subsection (1)(b), the term “clergy” means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

~~(b)~~(c) For the purposes of subsection ~~(1)(g)~~ (1)(i):

(i) the term “institutions of purely public charity” includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue

Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

(e)(d) For the purposes of subsection ~~(1)(i)~~ (1)(k), the term “public museums, art galleries, zoos, and observatories” means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
- (ii) held for future display; or
- (iii) used to house or store a public display.”

Section 2. Section 41-3-201, MCA, is amended to read:

“41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

- (a) a physician, resident, intern, or member of a hospital’s staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201~~(2)(a)~~(2)(b);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(5) (a) Except as provided in subsection (5)(b) or (5)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(6) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 3. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (19):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

- (a) if the vehicle is 4 or less years old, \$217;
- (b) if the vehicle is 5 through 10 years old, \$87; and
- (c) if the vehicle is 11 or more years old, \$28.

(3) Except as provided in subsection (14), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

- (a) if the declared weight is less than 6,000 pounds, \$61.25; or
- (b) if the declared weight is 6,000 pounds or more, \$148.25.

(4) Except as provided in subsection (14), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

- (a) 2,850 pounds and over, \$10; and
- (b) under 2,850 pounds, \$5.

(5) Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

- (i) less than 2 years old, \$282.50;
- (ii) 2 years old and less than 5 years old, \$224.25;
- (iii) 5 years old and less than 8 years old, \$132.50; and
- (iv) 8 years old and older, \$97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

- (i) a one-time registration fee of \$237.50;
- (ii) unless a new set of license plates is being issued, an insurance verification fee of \$5, which must be deposited in the account established under 61-6-158; and
- (iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection (14), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (14), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

- (a) under 16 feet in length, \$72; and
- (b) 16 feet in length or longer, \$152.

(10) Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

- (a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;
- (b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and
- (c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and (14), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

- (A) a fee of \$40.50 in the first year of registration; and
- (B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) Except as provided in subsection (12)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (12) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection (12)(a) must be deposited in the state general fund.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), ~~(1)(e)~~ (1)(d), ~~(1)(d)~~ (1)(e), ~~(1)(e)~~ (1)(g), ~~(1)(f)~~ (1)(h), ~~(1)(g)~~ (1)(i), ~~(1)(i)~~ (1)(k), ~~(1)(j)~~ (1)(l), ~~(1)(l)~~ (1)(n), or ~~(1)(m)~~ (1)(o), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(14) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of \$4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$4 fee, the department of fish, wildlife, and parks shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 4. Section 61-10-214, MCA, is amended to read:

"61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a dealer's or wholesaler's plate as provided in 61-4-102 and 61-4-125 are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), ~~(1)(e)~~ (1)(d), ~~(1)(d)~~ (1)(e), ~~(1)(e)~~ (1)(g), ~~(1)(f)~~ (1)(h), ~~(1)(g)~~ (1)(i), ~~(1)(i)~~ (1)(k), ~~(1)(j)~~ (1)(l), ~~(1)(l)~~ (1)(n), or ~~(1)(m)~~ (1)(o) or 15-6-228(4) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2011.

Approved April 27, 2011

CHAPTER NO. 279

[SB 59]

AN ACT PROVIDING FOR A MURAL THAT HONORS THE HISTORY OF MONTANA WOMEN AS COMMUNITY BUILDERS; AMENDING SECTION 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the art work decorating the Montana capitol conveys a narrative of the history of Montana and the significance of its government; and

WHEREAS, this ground we call Montana, on which Native American women met women from Europe, Asia, and Africa, bears the marks of generations of women's labor visible in the remains of tipi rings and homestead gardens, in the presence of one-room schools and university classrooms, in the storefronts of small businesses, and in the offices of corporations; and

WHEREAS, we know our culture through the stories of women like Pretty Shield, Mourning Dove, Dorothy Johnson, and Mildred Walker, through the beadwork, star quilts, pasties, and povitica made by thousands of women in homes across the state, and through the dozens of languages spoken by mothers to children on reservations and in immigrant communities that formed the fabric of Montana; and

WHEREAS, women in communities across Montana have pioneered the social institutions we now consider a part of community life because they stepped outside domestic roles to found libraries, museums, theaters, parks, playgrounds, schools, shelters, hospitals, labor unions, and social clubs; and

WHEREAS, women in Montana fought for and won the right to vote in 1914, 6 years before the passage of the Nineteenth Amendment to the U.S. Constitution, helped to send the first woman in American history to the U.S. Congress, have served and continue to serve in every branch of local, state, and tribal government, and have eloquently represented views across the entire spectrum of American politics; and

WHEREAS, with few exceptions, this story of Montana's past is not represented in the capitol's art, and a mural commemorating Montana women's contribution to the history and government of the state would enrich and more accurately tell Montana's story to its citizens and visitors alike.

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

Section 1. Creation of mural to honor women. (1) The capitol complex advisory council shall form a subcommittee, which may consist of council and noncouncil members, for the creation and placement of a mural to honor the historical contributions of women as community builders. Subcommittee members shall serve without additional compensation or reimbursement.

(2) The subcommittee shall:

(a) commission, through a competitive process, a qualified artist to create the mural described in subsection (3);

(b) solicit gifts, grants, and donations for the mural's creation and placement; and

(c) recommend to the council a specific location for the mural, which must be placed as provided in 2-17-808.

(3) The mural provided for in this section:

(a) must portray women in a manner that reflects a historical theme honoring Montana women as community builders in diverse roles, such as the center of the family, mothers, grandmothers, business leaders, educators, health care providers, and scientists;

(b) may not portray actual historical women, but must portray anonymous, unsung Montana heroines; and

(c) must be created in an artistic style consistent with the genre of artwork already in the capitol.

(4) The design, installation, maintenance, and funding of the mural is subject to provisions of the art and memorial plan adopted by the council pursuant to 2-17-804.

Section 2. Section 2-17-808, MCA, is amended to read:

“2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays. (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit; ~~and~~

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors; *and*

(i) *a mural honoring the historical contributions of women as community builders.*

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled “symbol of the pros”;

(b) the monuments to the liberty bell, the veterans’ and pioneer memorial building—landscape beautification project, Montana veterans, and Pearl Harbor survivors, and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled “burning bush”, “dryland farmer”, “farm girl”, “the river rat”, “top of the world”, “angus #68”, “the source”, “the Bozeman trail”, and “the Mullan road”;

(b) the art displays known as “Montana workers—mining, ranching, and building”, “copper city rodeo”, “dancing cascade”, “save a piece of the sky”, and “night light”;

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell; and

(e) the plaque and Lou Peters award commemorating Karl Ohs.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4).”

Section 3. Contingent voidness. If the capitol complex advisory council determines that the mural provided for in [section 1] cannot be accomplished pursuant to the criteria established in [section 1] within 5 years of [the effective date of this act], then [section 2] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2011

CHAPTER NO. 280

[SB 319]

AN ACT REVISING CHILD SAFETY RESTRAINT STANDARDS; WAIVING THE FINE FOR VIOLATION OF THE CHILD RESTRAINT REQUIREMENT UNDER CERTAIN CONDITIONS; ELIMINATING THE SECONDARY ENFORCEMENT RESTRICTION FOR CERTAIN RESTRAINT VIOLATIONS; AMENDING SECTIONS 61-9-420, 61-9-423, AND 61-13-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-9-420, MCA, is amended to read:

“61-9-420. Child safety restraint systems — standards — exemptions. (1) If a child under 6 years of age and weighing less than 60 pounds is a passenger in a motor vehicle, that motor vehicle must be equipped with one child safety restraint for each child in the vehicle and each child must be properly restrained. *The child safety restraint must be appropriate for the height and weight of the child as indicated by manufacturer standards.*

(2) The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems.

(3) The department may by rule exempt from the requirements of subsection (1) a child who because of a physical or medical condition or body size cannot be placed in a child safety restraint.”

Section 2. Section 61-9-423, MCA, is amended to read:

“61-9-423. Penalty. (1) ~~Violation~~ *Except as provided in subsection (2), violation* of 61-9-420 is punishable by a fine of not more than \$100.

(2) *The fine provided for in subsection (1) must be waived if proof of acquisition of an appropriate child safety restraint is presented within 7 days of the violation to the office of the charging officer and there has been no previous dismissal of a violation of 61-9-420 under this subsection.”*

Section 3. Section 61-13-103, MCA, is amended to read:

“61-13-103. Seatbelt use required — exceptions. (1) A driver may not operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt or, if 61-9-420 applies, is properly restrained in a child safety restraint.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, that the occupant is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle or a motor-driven cycle;

(d) an occupant of a vehicle licensed as special mobile equipment; or

(e) an occupant who makes frequent stops with a motor vehicle during official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(e).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except:

(a) upon reasonable cause to believe that the driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law; or

(b) *if a person in the vehicle who is under 6 years of age and weighs less than 60 pounds is not properly restrained under 61-9-420 or this section.”*

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved April 27, 2011

CHAPTER NO. 281

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2011. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. The following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Commissioner of Political Practices		
Hearing and Legal Costs	\$88,500	General Fund
Office of Public Instruction		
Pupil Transportation	\$510,000	General Fund
State Tuition Payments	\$356,000	General Fund
Office of State Public Defender		
Public Defender	\$1,200,000	General Fund
Death Penalty Cases	\$150,000	General Fund
Department of Administration		
Health Care and Benefits	\$470,767	General Fund
Montana Lottery	\$950,000	Proprietary Fund

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

Approved April 28, 2011

CHAPTER NO. 282

[SB 15]

AN ACT ESTABLISHING THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE; PROVIDING PENALTIES; AMENDING SECTIONS 61-8-101, 61-8-402, 61-8-404, 61-8-409, 61-8-714, 61-8-722, 61-8-731, AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

Section 1. Aggravated DUI. (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

- (a) the person's blood alcohol concentration is 0.16 or more;
- (b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;
- (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, or 61-8-406;

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 3 years of the commission of the present offense, or two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 7 years of the commission of the present offense.

(2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

(a) a fine of \$1,000; and

(b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the mandatory minimum sentences set forth in 61-8-714.

(3) During the suspended sentence imposed by the court under subsection (2)(b):

(a) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts if available;

(b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the court; and

(c) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

Section 2. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application — exceptions. (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c), and (2), with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and 61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, ~~and~~ 61-8-402 through 61-8-405, ~~and~~ [section 1], with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of

any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.”

Section 3. Section 61-8-402, MCA, is amended to read:

“61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person’s blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person’s body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or *[section 1]*;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; ~~or~~

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(C) *in violation of [section 1]*.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person’s driver’s license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver’s license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 4. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, [section 1], or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.”

Section 5. Section 61-8-409, MCA, is amended to read:

“61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person’s breath, for the purpose of estimating the person’s alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 or *[section 1]*.

(2) The person’s obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person’s driver’s license.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend the person’s driver’s license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5).”

Section 6. Section 61-8-714, MCA, is amended to read:

“61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) Except as provided in subsection (4) *or* (5), a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 12 months and by a fine of not less than \$600 or more than \$2,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person’s physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) Except as provided in subsection (4) *or* (5), on a second conviction, the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(3) Except as provided in subsection (4) *or* (5), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) *If the person has a prior conviction or pending charge for a violation of [section 1], the person shall be punished as provided in [section 1].”*

Section 7. Section 61-8-722, MCA, is amended to read:

“61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) Except as provided in subsection (4) *or* (5), a person convicted of a violation of 61-8-406 shall be punished by imprisonment

for not more than 10 days and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 20 days and by a fine of not less than \$600 or more than \$2,000.

(2) Except as provided in subsection (4) or (5), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) Except as provided in subsection (4) or (5), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) *If the person has a prior conviction or pending charge for a violation of [section 1], the person shall be punished as provided in [section 1].*

Section 8. Section 61-8-731, MCA, is amended to read:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 ~~and~~, the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, ~~or~~ 61-8-406, *or [section 1]*, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406, or [section 1], and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 9. Section 61-8-734, MCA, is amended to read:

“61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in [section 1], 61-8-714, 61-8-722, or 61-8-731, “conviction” means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant’s appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender’s fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant’s ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension of driver’s licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.”

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

Section 11. Coordination instruction. If House Bill No. 106 is not passed and approved, then [section 1(3)(b) of this act] is void.

Section 12. Effective date. [This act] is effective on passage and approval.

Section 13. Applicability — retroactive applicability. (1) [This act] applies to offenses committed on or after [the effective date of this act].

(2) For the purpose of determining the number of prior refusals to submit to testing under 61-8-402 and of convictions for prior offenses referred to in [section 1], [this act] applies retroactively, within the meaning of 1-2-109, to

refusals made and to violations of 45-5-106, 45-5-205, 61-8-401, or 61-8-406 committed prior to [the effective date of this act].

Approved April 28, 2011

CHAPTER NO. 283

[SB 42]

AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 46-5-224, MCA, is amended to read:

“46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence, *including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person’s body when subjected to testing;*

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.”

Section 2. Section 61-8-402, MCA, is amended to read:

“61-8-402. Blood Implied consent — blood or breath tests for alcohol, drugs, or both — refusal to submit to test — administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person’s blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person’s body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, ~~but~~ *except as provided in subsection (5), but* the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(6)~~ (7).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

~~(5)~~(6) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(6)~~(7) (a) Except as provided in subsection ~~(6)(b)~~ (7)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ (7)(b).

~~(7)~~(8) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

~~(8)~~(9) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or

an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(9)~~(10) A suspension under this section is subject to review as provided in this part.

~~(10)~~(11) This section does not apply to ~~blood and breath~~ tests, samples, and analyses of *blood or breath* used for purposes of medical treatment or care of an injured motorist, or related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(12) *This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6).*

Section 3. Section 61-8-404, MCA, is amended to read:

“61-8-404. Evidence admissible — conditions of admissibility. (1)

Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person’s blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person’s blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as ~~provided in this section under 61-8-402, whether or not a sample was subsequently collected for any purpose~~, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.”

Section 4. Section 61-8-405, MCA, is amended to read:

“61-8-405. Administration of tests. (1) Only a physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse, may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person’s right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person’s attorney.

(4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301.”

Section 5. Section 61-8-409, MCA, is amended to read:

“61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person’s breath, for the purpose of estimating the person’s alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person’s obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given *except as provided in 61-8-402(5)*. However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through ~~(8)~~ (9) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

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

Section 7. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4, that occur on or after [the effective date of this act].

Approved April 28, 2011

CHAPTER NO. 284

[SB 238]

AN ACT INCREASING JURISDICTIONAL LIMITS FOR JUSTICES' COURTS, CITY COURTS, AND SMALL CLAIMS COURTS; AMENDING SECTIONS 3-10-301, 3-10-1004, 3-11-103, 7-1-4151, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~\$7,000~~ \$12,000, exclusive of court costs *and attorney fees*;

(b) in actions for damages not exceeding ~~\$7,000~~ \$12,000, exclusive of court costs *and attorney fees*, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~\$7,000~~ \$12,000, exclusive of court costs *and attorney fees*, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~\$7,000~~ *\$12,000*;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~\$7,000~~ *\$12,000* imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding ~~\$7,000~~ *\$12,000* imposed by a statute or assessed by an order of a conservation district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~\$7,000~~ *\$12,000*, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed ~~\$7,000~~ *\$12,000*, exclusive of court costs *and attorney fees*;

(i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15;

(j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed ~~\$7,000~~ *\$12,000*.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 3-10-1004, MCA, is amended to read:

"3-10-1004. Jurisdiction — removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~\$3,000~~ *\$7,000*, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~\$3,000~~ *\$7,000*. The small claims court shall hear any action so removed from the district court."

Section 3. Section 3-11-103, MCA, is amended to read:

"3-11-103. Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed ~~\$5,000~~ *\$9,500*, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed ~~\$5,000~~ *\$9,500*;

(4) when the amount claimed, exclusive of costs, does not exceed ~~\$5,000~~ *\$9,500*, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed ~~\$5,000~~ *\$9,500*; and

(6) actions for the collection of a license fee required by an ordinance of the city or town.”

Section 4. Section 7-1-4151, MCA, is amended to read:

“7-1-4151. Municipal infractions — proceedings. (1) In municipal infraction proceedings:

(a) the matter must be tried before a municipal court judge or city court judge in the same manner as a small claim if the total amount of civil penalties does not exceed ~~\$3,000~~ *\$7,000*. The matter may only be tried before a judge in district court if the total amount of civil penalties assessed exceeds ~~\$3,000~~ *\$7,000*.

(b) the city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.

(c) the court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant’s behalf.

(d) the defendant may be represented by counsel of the defendant’s own choosing and at the defendant’s own expense;

(e) the defendant may answer by admitting or denying the infraction;

(f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. Each day that a violation occurs or is permitted to exist by the defendant constitutes a separate infraction.

(2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in the citation is served as provided in 7-1-4150 and fails without good cause to appear in response to the civil citation, judgment must be entered against the person.

(3) A person against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.

(4) Seeking a civil penalty as authorized in this section does not preclude a municipality from seeking alternative relief from the court in the same action.

(5) When judgment has been entered against a defendant, the court may do any of the following:

- (a) impose a civil penalty by entry of a judgment against the defendant;
- (b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;
- (c) grant appropriate alternative relief ordering the defendant to abate or cease the violation;
- (d) authorize the municipality to abate or correct the violation;
- (e) order that the municipality's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred, or both.

(6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt."

Section 5. Section 25-35-502, MCA, is amended to read:

"25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~\$3,000~~ \$7,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed ~~\$3,000~~ \$7,000."

Section 6. Section 25-35-503, MCA, is amended to read:

"25-35-503. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~\$3,000~~ \$7,000. The small claims court shall hear any action so removed from the district court."

Section 7. Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service must be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed ~~\$2,500~~ \$6,500. If a counterclaim or setoff is asserted in excess of ~~\$2,500~~ \$6,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged, leaving the defendant to prosecute the balance of the defendant's claim in an appropriate justice or district court action.

(3) The counterclaim must be made in substantially the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF..... COUNTY, MONTANA
BEFORE, JUSTICE OF THE PEACE

.....
Plaintiff

vs.

Counterclaim
Case No.

.....
Defendant(s)

..... Comes now the defendant, being first duly sworn, and alleges that the defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of \$....., for

..... which sum is now due, together with defendant's costs expended in this action.

Dated this day of, 20...

.....
Defendant

.....
Defendant's address

Subscribed and sworn to before me this..... day of....., 20...

.....
Justice of the peace

By:

Clerk, small claims division"

Section 8. Section 75-7-123, MCA, is amended to read:

"75-7-123. Penalties — restoration. (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:

(a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or

(b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

(2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

(3) In addition to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or

(b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed ~~\$7,000~~ \$12,000. If the amount of liability for restoration exceeds ~~\$7,000~~ \$12,000, then the action must be brought in district court.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds

provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601."

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved April 28, 2011

CHAPTER NO. 285

[SB 333]

AN ACT CONFORMING MONTANA LAW TO THE 2008 AMENDMENTS TO THE UNIFORM PRINCIPAL AND INCOME ACT; CHANGING THE MARITAL DEDUCTION REQUIREMENTS TO ALLOW A TRUST TO QUALIFY FOR THE FEDERAL MARITAL DEDUCTION REQUIREMENTS; PROVIDING FOR THE ALLOCATION OF TAXABLE INCOME FOR THE DETERMINATION OF TAXES ON UNDISTRIBUTED ENTITY TAXABLE INCOME; PROVIDING A TRANSITION PROVISION; AMENDING SECTIONS 72-34-441 AND 72-34-452, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 72-34-441, MCA, is amended to read:

"72-34-441. Payments characterized as interest or dividend — allocation to income — allocation of other payments — excess allocation to income in order to obtain estate tax marital deduction. (1) In this section,:

(a) ~~"payment"~~ *"Payment"* means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, ~~including. For purposes of subsections (4), (5), (6), and (7), the term also includes any payment from any separate fund, regardless of the reason for the payment.~~

(b) *"Separate fund"* includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest, ~~or~~ a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ *the payment* to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

~~(4) If, to obtain an estate tax marital deduction for a trust, a trustee allocates more of a payment to income than provided by this section, the trustee shall~~

~~allocate to income the additional amount necessary to obtain the marital deduction.~~

(4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply and subsections (2) and (3) do not apply in determining the allocation of a payment made from a separate fund to:

(a) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code, 26 U.S.C. 2056(b)(7), as amended, has been made; or

(b) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code, 26 U.S.C. 2056(b)(5), as amended.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code, 26 U.S.C. 2056(b)(7)(C), as amended.

(6) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 3% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, 26 U.S.C. 7520, as amended, for the month preceding the accounting period for which the computation is made.

~~(5)(8) This section does not apply to payments to which 72-34-442 applies."~~

Section 2. Section 72-34-452, MCA, is amended to read:

"72-34-452. Payment of taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid ~~proportionately as follows:~~

(a) from income to the extent that receipts from the entity are allocated *only* to income;

(b) from principal to the extent that ~~both of the following apply:~~

(i) receipts from the entity are allocated *only* to principal; ~~and~~

~~(ii) the trust's share of the entity's taxable income exceeds the total receipts described in subsection (3)(a) and subsection (3)(b)(i).~~

(c) *proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and*

(d) *from principal to the extent that the tax exceeds the total receipts from the entity.*

(4) ~~For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax. After applying subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary."~~

Section 3. Transitional matters. Section 72-34-441, as amended by [section 1], applies to a trust described in 72-34-441(4) on and after the following dates:

(1) if the trust is not funded as of [the effective date of section 1], the date of the decedent's death;

(2) if the trust is initially funded in the calendar year beginning January 1, 2012, the date of the decedent's death; or

(3) if the trust is not described in subsection (1) or (2), January 1, 2012.

Section 4. Effective date. [This act] is effective January 1, 2012.

Approved April 28, 2011

CHAPTER NO. 286

[SB 347]

AN ACT REQUIRING NOTICE OF PROPOSED AGENCY PRIVATE PROPERTY ASSESSMENTS TO THE PUBLIC AND INTERESTED PERSONS THROUGH E-MAIL AND POSTAL MAILING LISTS AND A WEBSITE; AND ALLOWING CIVIL ACTION TO VOID A PROPOSED AGENCY ACTION FOR FAILURE TO PROVIDE REQUIRED NOTICE.

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

Section 1. Notice to public and interested persons. (1) After an impact assessment has been completed, and regardless of the findings in the assessment, the state agency that performed the impact assessment shall provide notice to the public and interested persons of its intent to engage in the proposed action. The notice must be provided through use of either electronic e-mail lists or postal mail lists to all persons who have elected to be notified of impact assessments and through the use of the state's official internet website used by all state agencies.

(a) The electronic e-mail lists and postal mail lists must be established to allow interested persons to be on lists notifying them of impact assessments of all state agencies or of specific information based on agency name or geographical location of a proposed action and may provide notice based on other criteria that would promote public awareness of proposed actions.

(b) The agency website link must allow access to impact assessments of all state agencies or to specific information based on agency name or geographical location of a proposed action and may also be based on other criteria that would promote public awareness of proposed actions. The website must provide a summary of the impact assessment and a link to a source for the complete impact assessment.

(2) If due to time constraints a state agency is compelled to take an action allowed by this part before completion of an impact assessment, it shall, within 3 days of learning of the requirement to take the action, post notice of the action and provide a brief explanation of the action, the need for expedited action, and an estimate of when the action will be completed and the expected availability of the completed summary and impact statement.

(3) Unless the action may be taken without a completed impact statement as provided in this part, the state agency may not take the proposed action until it has completed and posted the impact statement.

(4) The state agency shall update the assessment and provide notice to the public if the action is not adopted before the 180th day after the date the original notice was given.

Section 2. Suit to invalidate state agency action. (1) A state agency's adopted action is not valid unless the action was taken in compliance with 2-10-105. A private property owner affected by a state agency action taken without fulfilling the requirements of 2-10-105 may bring suit for a declaration of invalidity of the action.

(2) A suit under this section must be filed in a court in the county in which the property owner's affected property is located. If the affected property is located in more than one county, the property owner may file suit in any county in which the affected property is located.

(3) The court shall award a property owner who prevails in a suit under this section reasonable and necessary attorney fees and court costs.

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 10, part 1, and the provisions of Title 2, chapter 10, part 1, apply to [sections 1 and 2].

Approved April 28, 2011

CHAPTER NO. 287

[SB 385]

AN ACT GENERALLY REVISING THE MONTANA PARENTS AS SCHOLARS PROGRAM; CLARIFYING THE FUNDING SOURCE FOR THE PROGRAM; CLARIFYING REPORTING REQUIREMENTS FOR THE PROGRAM; AMENDING SECTION 53-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-4-209, MCA, is amended to read:

“53-4-209. Montana parents as scholars program — department duties. (1) There is a Montana parents as scholars program administered by the department.

(2) The department shall:

(a) use state maintenance of effort funds or temporary assistance for needy families funds, ~~to the extent practicable,~~ in a program to provide public assistance ~~only~~ to eligible ~~individuals~~ households for the purpose of continuation of education leading toward a high school diploma, a general

equivalency degree, *vocational training*, an associate's degree, or a baccalaureate degree;

~~(b) establish or coordinate a skills training center pilot program in coordination with the board of regents or a community college district to provide training to individuals identified as appropriate through an assessment process;~~

~~(e)(b) allow an individual receiving public assistance from the program temporary assistance for needy families to attend an approved educational program if the individual:~~

~~(i) has completed an employee assessment conducted as provided by rule;~~

~~(ii)(i) meets the income and resource eligibility requirements for temporary assistance for needy families; and~~

~~(iii)(ii) qualifies as a full-time student pursuant to subsection (4); and~~

~~(iv) completes a 180-hour work activity requirement in a 12-month period that may include work study, internships, or paid employment;~~

~~(d)(c) limit approved educational programs to educational courses that are intended to promote economic self-sufficiency, not to exceed the baccalaureate level, or one vocational training program; and~~

~~(e) amend the state plan submitted to the United States department of health and human services to provide that the state elects, as authorized by 42 U.S.C. 602(a)(1)(A)(ii), to define work as including all activities permitted under 42 U.S.C. 607 and satisfactory full-time school attendance.~~

~~(3) The department shall provide participants may apply for and may be eligible for child-care assistance provided by the department for dependent day care while the recipient is in a work activity to be paid from the temporary assistance for needy families block grant funds that are transferred to discretionary funding for child care.~~

~~(4) A program must require a recipient participant to be a full-time student, which means that a recipient participant:~~

~~(a) shall maintain enrollment in at least 12 credit hours each semester or 30 credit hours a year; or~~

~~(b) must be a full-time high school student, GED student, or vocational training student as defined by the institution in which the participant is enrolled;~~

~~(b)(c) shall maintain a 2.0 grade point average on a 4.0 grade point scale or be making satisfactory progress as defined by the institution in which the participant is enrolled; and~~

~~(e) shall cooperate with paternity and child support requirements;~~

~~(d) shall agree to relocate after graduation, if necessary, to seek employment in a job for which the education was intended; and~~

~~(e)(d) may not be allowed to remain in the program after receiving a baccalaureate degree.~~

~~(5) (a) There may be no more than 25 participants in the program at any one time.~~

~~(b) Temporary assistance for needy families participants within the 12-month period allowed by federal law do not count in the total number of participants in the parents as scholars program. However, the parents as scholars program may be used to extend a participant's education beyond the 12-month federal period.~~

(6) *The department shall provide annual reports to the legislative finance committee and the children, families, health, and human services interim committee.*”

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved April 28, 2011

CHAPTER NO. 288

[SB 412]

AN ACT PROVIDING A TEMPORARY TAX EXEMPTION FOR PROPERTY OWNED BY A FEDERALLY RECOGNIZED MONTANA INDIAN TRIBE WHEN THE PROPERTY HAS A FEDERAL TRUST APPLICATION PENDING; PROVIDING THAT EXISTING TAX LIENS ARE NOT EXTINGUISHED; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Temporary exemption. (1) Subject to subsection (2), property owned in fee by a federally recognized Indian tribe located within the boundaries of the state of Montana is temporarily exempt from taxation on January 1 after the following conditions are met:

(a) the United States department of the interior, bureau of Indian affairs, has determined that the initial written request or trust application submitted by the tribe is complete; and

(b) the tribe has submitted a timely property tax exemption application to the department and the department has approved the tribe's exemption application.

(2) The temporary exemption applies only for the timeframe during which a decision on the trust application is officially pending before the United States department of interior, bureau of Indian affairs, but the exemption may not exceed a period of 5 years and ceases earlier if the United States denies the trust application.

(3) For tax years following the department's approval of the exemption, the tribe shall annually certify to the Department that the trust application is still under consideration by the United States department of interior, bureau of Indian affairs, and has not been denied. The exemption applies only for tax years for which the department has received a timely certification from the affected tribe.

(4) If a trust application has been denied, the temporary exemption expires on December 31 of the year in which the trust application was denied. The temporary exemption is no longer available for property associated with a trust application that has been denied.

(5) If the United States takes tribally owned property out of trust, the property is subject to tax as otherwise provided by federal and state law.

Section 2. Rulemaking authority. The department may adopt rules to implement the provisions of [section 1].

Section 3. Existing tax liens not extinguished. [This act] does not extinguish existing property taxes, including but not limited to taxes due and owing, delinquent taxes, tax liens, or tax deeds on property.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective January 1, 2012.

Approved April 28, 2011

CHAPTER NO. 289

[SB 420]

AN ACT PROVIDING PENALTIES FOR DELINQUENT FILING OF REQUIRED AUDITS AND REPORTS BY A LOCAL GOVERNMENT ENTITY TO THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES ESTABLISHING A FINE; ALLOWING THE DEPARTMENT TO WAIVE THE PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-503 AND 2-7-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 2-7-503, MCA, is amended to read:

“2-7-503. Financial reports and audits of local government entities.

(1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed *and submitted to the department for review* within 6 months of the end of the reporting period. ~~The local government entity shall submit the financial report to the department for review.~~

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection

(3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

(7) *Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517.*

Section 2. Section 2-7-517, MCA, is amended to read:

“2-7-517. Penalty Penalties — rules to establish fine. (1) When a local government entity has failed to file a report as required by 2-7-503(1), ~~unless an extension has been granted by the department for good cause shown,~~ or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) *In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.*

(2)(3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

(4) *The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.*

(5) *The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section.*

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

Section 4. Applicability. [This act] applies to audits and reports required under [section 1] for fiscal year 2010 and thereafter.

Approved April 28, 2011

CHAPTER NO. 290

[HB 265]

AN ACT PROVIDING THAT AN INSURANCE COMPANY MAY NOT UNILATERALLY DISREGARD A REPAIR OPERATION OR COST IDENTIFIED BY AN ESTIMATING SYSTEM THAT THE INSURER AND AN AUTOMOBILE BODY REPAIR BUSINESS OR LOCATION HAVE AGREED TO UTILIZE IN DETERMINING THE COST OF REPAIR; AND AMENDING SECTION 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-18-224, MCA, is amended to read:

“33-18-224. Designation of specific automobile body repair businesses prohibited. (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(i) require that a claimant under the policy use a particular automobile body repair business or location for an estimate or a repair; or

(ii) engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location; or

(iii) *unilaterally disregard a repair operation or cost identified by an estimating system that the insurer and an automobile body repair business or location have agreed to utilize in determining the cost of repair.*

(b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.

(2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

(c) Upon request, the insurance company shall provide, without prejudice or bias, the claimant with a list that includes all automobile body repair businesses

or locations that are reasonably close or convenient to the claimant and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:

- (i) possesses the equipment necessary to undertake repairs;
- (ii) undertakes training of management and technical personnel with respect to repair information and the claims process;
- (iii) agrees to perform quality repairs at the market price and that meet reasonable industry repair standards;
- (iv) agrees to warrant the quality of work, including refinishing, in writing to the claimant, for a period of not less than 1 year from the date of repair;
- (v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the claimant.

(d) If the claimant requests the list provided for in subsection (2)(c), the insurance company shall inform the claimant that the claimant may use an automobile body repair business or location at the sole discretion of the claimant.

(3) For the purposes of this section, an incentive or inducement does not include:

- (a) providing a claimant with the list provided for in subsection (2)(c); or
- (b) referring to a warranty issued by an automobile body repair business or location.

(4) The claimant may use an automobile body repair business or location at the claimant's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the market price, as defined in 33-18-222.

(5) If the claimant uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the claimant.

(6) It is unlawful for an automobile body repair business or location to charge or agree to charge a claimant more than an uninsured customer for any automobile body repair service.

(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(8) For purposes of this section:

(a) “automobile body repair business or location” does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products;

(b) “claimant” means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer.”

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

Approved April 28, 2011

CHAPTER NO. 291

[HB 416]

AN ACT PROVIDING FOR QUALITY ASSURANCE ACTIVITIES BY MEDICAL PRACTICE GROUPS; PROVIDING FOR CONFIDENTIALITY OF THE PROCEEDINGS OF QUALITY ASSURANCE COMMITTEES; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) (a) “Data” means written reports, notes, or records or oral reports or proceedings created by or at the request of a quality assurance committee that are used exclusively in connection with quality assessment or improvement activities, including but not limited to the professional training, supervision, or discipline of a medical practitioner by a medical practice group.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) “Health care facility” has the meaning provided in 50-5-101.

(3) (a) “Incident report” or “occurrence report” means the written business record of a medical practice group created in response to an untoward event, including but not limited to a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee that was conducted in response to an incident report or occurrence report.

(4) “Medical practice group” means a group of two or more medical practitioners practicing medicine in a professional corporation, professional limited liability company, partnership, sole proprietorship, or associations of these entities.

(5) “Medical practitioner” means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

(6) “Quality assurance committee” means a duly appointed committee within a medical practice group that administers a quality assurance program and may be called by another name within the medical practice group, including

but not limited to a utilization review, peer review, medical ethics review, professional standards review, quality assurance, or quality improvement committee.

(7) "Quality assurance program" means a comprehensive, ongoing system of mechanisms established by a medical practice group for monitoring and evaluating the quality and appropriateness of the care provided to patients in order to:

(a) identify and take steps to correct any significant problems and trends in the delivery of care; and

(b) take advantage of opportunities to improve care.

(8) (a) "Records" means records of interviews, internal reviews and investigations, and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated during the activities of a quality assurance program.

(b) The term does not mean original medical records or other records kept relative to any patient in the course of the business of operating as a medical practice group.

Section 2. Quality assurance program activities. A quality assurance program may include but is not limited to the following activities:

(1) review of pending malpractice claims;

(2) review of quality assurance issues;

(3) identification of areas in need of improvement related to quality and appropriateness of patient care;

(4) promotion and evaluation of best practices;

(5) review and analysis of risk management issues;

(6) oversight of medical event management processes;

(7) prioritization of risk management activities;

(8) tracking of information and of trends identified by data;

(9) investigation of incidents related to quality;

(10) development of risk management strategies, education, and training;

(11) development and implementation of remedial solutions related to quality and appropriateness of patient care for all licensed professionals and other staff affiliated with the medical practice group;

(12) review of information and trends related to claims; and

(13) peer review and oversight of medical practitioners.

Section 3. Quality assurance committee access to information. (1) It is in the interest of public health and patient medical care that quality assurance committees have access to medical records and other health care information relating to the condition and treatment of the patients of medical practice groups in order to:

(a) evaluate matters relating to the care and treatment of patients for research purposes;

(b) reduce morbidity or mortality; and

(c) obtain statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries.

(2) To carry out these purposes, a medical practice group and its agents and employees may provide medical records or other health care information

relating to the condition and treatment of any patient of the medical practice group to any quality assurance committee of the medical practice group.

Section 4. Medical practice group quality assurance — confidentiality — exception — liability of members. (1) Except as provided in subsection (6), the proceedings of a quality assurance committee of a medical practice group, the data it produces, and the material it considers:

- (a) must be confidential;
- (b) may not be considered to be a public record; and

(c) may not be subject to discovery or introduction into evidence in any civil action against a health care facility or an individual employed by or under contract with a health care facility or a medical practice group that results from matters that are the subject of evaluation and review by the quality assurance committee.

(2) A person who was in attendance at a meeting of the quality assurance committee may not be required to testify in any civil action about:

(a) the information and materials produced or presented during the proceedings of the quality assurance committee; or

(b) the findings, recommendations, evaluations, opinions, or other actions of the quality assurance committee or its members.

(3) Information otherwise available is not immune from discovery or use in a civil action merely because the information was presented during proceedings of the quality assurance committee. Nothing in this section may prevent a medical practitioner from using otherwise available information in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges, or employment of the medical practitioner.

(4) A member of the quality assurance committee or a person who provides information orally or in writing to a quality assurance committee may be subpoenaed and required to testify in a civil action regarding events about which the person has knowledge independent of the quality assurance program. The member or person may not be asked:

(a) for impeachment or other purposes, about the information the person provided to the quality assurance committee; or

(b) about any opinions formed as a result of the quality assurance committee proceeding.

(5) All data relating to quality assurance committee activities compiled under [sections 1 through 6] must be maintained in a confidential location separate from patient medical records.

(6) The governing body of a medical practice group may waive privileges under this section and release information or present data of the quality assurance program by discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. Without waiving privileges under this section, the governing body of a medical practice group may voluntarily release information or present data to a health care facility quality assurance committee established under 50-16-202. The information or records must be subject to the privileges and immunities provided for in 50-16-202.

(7) A duly appointed member of a quality assurance committee who acts without malice or fraud may not be subject to liability for damages in any civil action because of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the quality assurance committee.

Section 5. Quality assurance guidelines — reviews — contracts. (1)

Reviews of medical practitioners conducted by a quality assurance committee under [sections 1 through 6] must comply with the following guidelines:

(a) A random review is a review of at least 10 randomly selected patient charts, which must be reviewed by a quality assurance committee. The quality assurance committee may gather data from any source for purposes of the review. The quality assurance committee shall submit an evaluation report to the medical practice group outlining the review findings and recommending changes if changes are determined necessary.

(b) A focused review is a review intended for specific clinical and quality improvement purposes, such as:

(i) reviewing patient medical records relating to a certain disease or procedural category for purposes of comparing documented treatment to available and current standards of medical care;

(ii) assessing the efficacy and efficiency of an office procedure or process related to clinical care; or

(iii) reviewing office and clinical practices prompted by an analysis and results of incident reports.

(c) An incident review is for purposes of gathering data, investigating, conducting analysis, coordinating all responses, and recommending and initiating corrective action, as necessary, connected with a specific incident involving the delivery of medical care to a patient of the medical practice group.

(2) (a) A review of a medical practitioner conducted by a quality assurance committee under [sections 1 through 6] must be based on appropriateness, medical necessity, adequacy of documentation, and efficiency of services.

(b) The medical practitioner being reviewed must be immediately advised of the findings of the quality assurance committee in order to further the educational process for the physician.

(c) As a result of a review of a medical practitioner conducted under [sections 1 through 6], the medical practice group is responsible for documenting:

(i) any corrective action that is taken;

(ii) any policies, procedures, or clinical processes that are changed;

(iii) the person responsible for implementing the changes; and

(iv) how the medical practice group will ensure that the changes are made.

(3) A medical practice group may contract with a group or organization composed of medical practitioners or with a nonprofit corporation engaged in performing the functions of a quality assurance committee for purposes of conducting any review allowed under [sections 1 through 6].

Section 6. Restrictions on use or publication of information. (1) A quality assurance committee may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment and for research and statistical purposes.

(2) In any report or publication of findings and conclusions of a quality assurance committee, the committee or the members, agents, or employees of the committee may not disclose the name or identity of any patient whose medical records or other protected health information have been studied.

(3) A quality assurance committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any patient of a medical practice group.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 through 6].

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

Approved April 28, 2011

CHAPTER NO. 292

[HB 172]

AN ACT REVISING LAWS RELATED TO THE HUNTING OF GRIZZLY BEARS; AMENDING SECTIONS 87-1-304, 87-2-701, 87-5-301, AND 87-5-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-1-304, MCA, is amended to read:

“87-1-304. Fixing of seasons and bag and possession limits. (1) ~~(a)~~ The *Subject to the provisions of 87-5-302, the commission may:*

~~(i)~~(a) fix seasons, bag limits, possession limits, and season limits;

~~(ii)~~(b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; ~~and~~

~~(iii)~~(c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf in those areas;:

~~(b)~~(d) The ~~commission may~~ restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences; *and*

~~(e)~~(e) The ~~commission may~~ declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) ~~The~~ *Subject to the provisions of 87-5-302, the commission may* divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake,

or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-701, MCA, is amended to read:

"87-2-701. Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

- (a) moose—resident, \$125; nonresident, \$750;
- (b) mountain goat—resident, \$125; nonresident, \$750;
- (c) mountain sheep—resident, \$125; nonresident, \$750;
- (d) antelope—resident, \$14; nonresident, \$200;
- (e) grizzly bear—resident, ~~\$50~~ \$150; nonresident, ~~\$300~~ \$1,000;
- (f) black bear—nonresident, \$350;
- (g) wild buffalo or bison—resident, \$125; nonresident, \$750.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of ~~\$25~~ \$50 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) ~~Special~~ *Except as provided in 87-5-302 for special grizzly bear licenses, special licenses must be issued in a manner prescribed by the department.*"

Section 3. Section 87-5-301, MCA, is amended to read:

"87-5-301. Policy toward grizzly bear bears. It is hereby ~~declared~~ the policy of the state of Montana to ~~protect, conserve, and manage~~ grizzly bear bears as a rare species of Montana wildlife *in need of management.*"

Section 4. Section 87-5-302, MCA, is amended to read:

"87-5-302. Commission regulations on grizzly bear bears. (1) The commission ~~shall have authority to provide open and closed seasons; means of taking; shooting hours; may:~~

(a) *pursuant to subsection (2), regulate the hunting of grizzly bears, including the establishment of tagging requirements for carcasses, skulls, and hides; possession limits; and*

(b) *establish requirements for the transportation, exportation, and importation of grizzly bear bears.*

(2) *When special grizzly bear licenses are to be issued pursuant to 87-2-701, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels and with the intent to meet population objectives for elk, deer, and antelope. The*

provisions of this subsection do not affect the restriction provided in 87-2-702(3) that limits a person to the taking of only one grizzly bear in Montana.”

Section 5. Effective date. [This act] is effective March 1, 2012.

Approved April 29, 2011

CHAPTER NO. 293

[SB 1]

AN ACT REQUIRING RECALCULATION OF THE AMOUNT ASSESSABLE TO EACH LOT, TRACT, OR PARCEL IN A SPECIAL IMPROVEMENT DISTRICT OR RURAL SPECIAL IMPROVEMENT DISTRICT IF THE NUMBER OF LOTS, TRACTS, OR PARCELS INCREASES; REQUIRING NOTICE OF POSSIBLE RECALCULATIONS DURING THE CREATION OF THE DISTRICT; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2151, 7-12-4104, 7-12-4106, 7-12-4161, AND 7-12-4162, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 7-12-2103, MCA, is amended to read:

“7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating a special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention.

(2) The resolution must:

(a) designate the number of the district;

(b) describe the boundaries of the district;

(c) state in the resolution the general character of the improvements that are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost of the work; ~~and~~

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district; *and*

(f) *if the method of assessment is that described in 7-12-2151(1)(d), specify that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-2151(4).*

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions of streets and rights-of-way, and it may exempt any of the work already done upon a street to the official grade.”

Section 2. Section 7-12-2105, MCA, is amended to read:

“7-12-2105. Notice of resolution of intention to create district — hearing — exception. (1) Upon passage of a resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation

owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. *If the method of assessment described in 7-12-2151(1)(d) is used, the notice must state that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-2151(4).*

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2)."

Section 3. Section 7-12-2151, MCA, is amended to read:

"7-12-2151. Assessment of costs. (1) To defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the board of county commissioners shall assess the entire cost of the improvements against benefited lots, tracts, or parcels of land in the district, based upon the benefits received, and shall adopt one or any combination of the following methods of assessment for each improvement made or acquired for the benefit of the district:

(a) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited lots, tracts, or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a lot, tract, or parcel of land representing the benefit conferred upon the lot, tract, or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot, tract, or parcel.

(b) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited lots or pieces of land within the district, if the board determines the assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the lot, tract, or parcel.

(c) Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.

(d) Each lot, tract, or parcel of land in the district may be assessed an equal amount based upon the total cost of the improvement.

(e) Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.

(2) The board may use one or any combination of methods of assessment in a single special improvement district and, if more than one improvement is undertaken, need not assess each lot, tract, or parcel in the district for the cost of all the improvements. *If the method of assessment described in subsection (1)(d) is used, the resolution of intention under 7-12-2103 and notice under 7-12-2105 must provide that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in subsection (4).*

(3) The board in its discretion may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds ~~in its hands that are available to it~~ for that purpose or to include the whole or any part of the costs within the amount of the assessment to be paid by the benefited property in the district.

(4) (a) *If the method specified for assessment is that provided in subsection (1)(d) and an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of a district created as provided in this part during the term of bonded indebtedness that is payable from the assessments, the board shall recalculate the amount assessable to each lot, tract, or parcel. The board shall comply with the provisions of sections 7-12-2158 through 7-12-2160 in adopting the recalculated amount.*

(b) *The board shall base the recalculation on the amount of the district's outstanding bonded indebtedness for the current fiscal year and shall spread the assessments across the district based on the number of benefited lots, tracts, or parcels within the boundaries of the district as of July 1 following the action that resulted in the increase in the number of benefited lots, tracts, or parcels."*

Section 4. Section 7-12-4104, MCA, is amended to read:

"7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof; ~~and~~

(d) specify the method or methods by which the costs of the improvements will be assessed against property in the district; *and*

(e) *if the method of assessment is that described in 7-12-4162(3)(a), specify that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the*

assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-4162(3)(b).

(3) When any improvement is to be made in paving, the city or town council may, in describing the general character of it in the resolution, describe several kinds of paving.”

Section 5. Section 7-12-4106, MCA, is amended to read:

“7-12-4106. Notice of passage of resolution of intention — exception.

(1) Except as provided in subsection (4), upon having passed the resolution of intention pursuant to 7-12-4104, the council shall give notice of the passage of the resolution of intention.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to each person, firm, or corporation or the agent of the person, firm, or corporation having real property within the proposed district listed in the owner’s name upon the last-completed assessment roll for state, county, and school district taxes, at the owner’s last-known address, upon the same day that the notice is first published or posted.

(3) (a) The notice must describe the general character of the proposed improvements, state the estimated cost of the improvements, describe generally the method by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of the improvements or the creation of the district. *If the method of assessment described in 7-12-4162(3)(a) is used, the notice must state that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-4162(3)(b).*

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a district that is created under 7-12-4114 following receipt of a petition as provided in 7-12-4102(3).”

Section 6. Section 7-12-4161, MCA, is amended to read:

“7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165 for each improvement to be made or acquired for the benefit of the district.

(2) The city council may use one or any combination of methods of assessment in a single special improvement district, and if more than one improvement is undertaken, each lot or parcel of land in the district need not be assessed for the cost of all the improvements. *If the method of assessment*

described in 7-12-4162(3)(a) is used, the resolution of intention under 7-12-4104 and notice under 7-12-4106 must provide that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-4162(3)(b)."

Section 7. Section 7-12-4162, MCA, is amended to read:

"7-12-4162. Assessment of costs — area option — assessed valuation option — equal amount option. (1) (a) The city council or commission shall assess the entire cost of an improvement against benefited property in the district, each lot or parcel of land assessed within such district to be assessed for that part of the whole cost which its assessable area bears to the assessable area of all benefited lots or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection, "assessable area" means an area of a lot or parcel of land representing the benefit conferred on the lot or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot or parcel.

(b) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

(c) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other benefited land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other benefited land within the district shall bear.

(2) The city council or city commission may assess the cost of an improvement against each lot or parcel of land in the district based on the assessed value of the benefited lots or parcels of land within the district if the council or commission determines such assessment to be equitable and in proportion to and not exceeding the benefits derived from the improvement by the lot or parcel.

(3) (a) The city council or city commission may assess each lot or parcel of land in the district an equal amount based upon the total cost of the improvement.

(b) *If the method specified for assessment is that described in subsection (3)(a) and an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of a district created as provided in this part during the term of bonded indebtedness that is payable from the assessments, the city council or city commission shall recalculate the amount assessable to each lot, tract, or parcel. The city council or city commission shall comply with the provisions of sections 7-12-4176 through 7-12-4178 in adopting the recalculated amount. The city council or city commission shall base the recalculation on the amount of the district's outstanding bonded indebtedness for the current fiscal year and shall spread the assessments across the district based on the number of benefited lots, tracts, or parcels within the boundaries of the district as of July 1*

following the action that resulted in the increase in the number of benefited lots, tracts, or parcels.”

Section 8. Effective date. [This act] is effective January 1, 2012.

Section 9. Applicability. [This act] applies to bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42, for which the resolution to create the district is adopted after December 31, 2011.

Approved April 29, 2011

CHAPTER NO. 294

[SB 16]

AN ACT REQUIRING A PERSON CONDUCTING SIMULCAST RACING THROUGH A SIMULCAST PARIMUTUEL NETWORK TO ENTER INTO A CONTRACT WITH THE BOARD OF HORSERACING; PROVIDING THAT A PERSON CONDUCTING SIMULCAST RACING WITHOUT A CONTRACT IS GUILTY OF A MISDEMEANOR; AUTHORIZING THE BOARD OF HORSERACING TO ACT AS A SIMULCAST PARIMUTUEL NETWORK PROVIDER WITH RESPECT TO SIMULCAST RACES; APPROPRIATING CERTAIN FUNDS TO THE BOARD OF HORSERACING; AMENDING SECTIONS 23-4-101, 23-4-105, 23-4-201, AND 23-4-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-4-101, MCA, is amended to read:

“23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advance deposit wagering” means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering. The money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) “Advance deposit wagering hub operator” means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

(3) “Board” means the board of horseracing provided for in 2-15-3106.

(4) “Board of stewards” means a board composed of three stewards who supervise race meets.

(5) “Department” means the department of livestock provided for in Title 2, chapter 15, part 31.

(6) “Fantasy sports league” has the meaning provided in 23-5-801.

(7) “Immediate family” means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(8) "Match bronc ride" means a saddle bronc riding contest consisting of two sections known as a "long go" and a "short go" in which the win, place, and show winners are determined by judges of the rides for each go.

(9) "Minor" means a person under 18 years of age.

(10) "Parimutuel facility" means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

(11) "Parimutuel network" means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

(12) "Persons" means individuals, firms, corporations, fair boards, and associations.

(13) (a) "Race meet" means racing of registered horses or mules, match bronc rides, and wild horse rides at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(14) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(15) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(16) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(17) "Simulcast parimutuel network" means an association ~~licensed by that~~ *has contracted with* the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races. ~~A simulcast parimutuel network may be or has been~~ licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues. *The board may act as a simulcast parimutuel network provider with respect to simulcast races.*

(18) "Source market fee" means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

(19) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(20) "Wild horse ride" means a wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner."

Section 2. Section 23-4-105, MCA, is amended to read:

"23-4-105. Authority of board. (1) The board shall license and regulate racing, match bronc rides, and wild horse rides and review race meets held in this state under this chapter. All percentages withheld from amounts wagered, amounts set aside pursuant to 23-4-202(4)(d), percentages collected pursuant to 23-4-204(3), percentages collected pursuant to 23-4-302(3) and (5)(b)(iii), and money collected pursuant to 23-4-304(1)(a) and (1)(b) must be deposited in a state special revenue account and are statutorily appropriated to the board as

provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), 23-4-302(3) and (5)(b)(iii), and 23-4-304(1)(a) and (1)(b) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently authorized in Montana the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry.

(2) Funds retained by the board in a state special revenue fund pursuant to 23-4-302(1) and (4) are statutorily appropriated to the board as provided in 17-7-502 for the operation of a simulcast parimutuel network and for other purposes that the board considers appropriate for the good of the existing horseracing industry.”

Section 3. Section 23-4-201, MCA, is amended to read:

“23-4-201. Licenses — contracts. (1) *(a)* A person may not hold a race meet, ~~including simulcast race meets under the parimutuel system,~~ or conduct fantasy sports league wagering through a parimutuel facility, parimutuel network, or a simulcast parimutuel network conducting a fantasy sports league in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file with the department an application that must set forth the time, place, and number of days the license will continue and other information the board requires.

(b) A person may not conduct simulcast racing through a simulcast parimutuel network without having entered into a contract with the board.

(2) A person who participates in a race meet, except for a match bronc ride or a wild horse ride, must be licensed and charged an annual fee set by the board. The annual fee must be paid to the department and used for expenses of administering this chapter. Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) An application to hold a race meet must be submitted to the department, and the board shall act on the application within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race meet comply with the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may ~~apply for a license~~ *submit a contract proposal to the board* to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

(8) A license to operate a parimutuel facility conducting fantasy sports league wagering may not be issued to an applicant unless the applicant is also licensed under Title 23, chapter 5.”

Section 4. Section 23-4-202, MCA, is amended to read:

“23-4-202. Penalty for violations of law — authority of board — judicial review. (1) (a) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, except a participant in a match bronc ride or a wild horse ride, without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(b) A person operating a parimutuel facility, parimutuel network, or simulcast parimutuel network that conducts fantasy sports league wagering without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(c) *A person conducting simulcast racing through a simulcast parimutuel network without having entered into a contract with the board is guilty of a misdemeanor.*

(2) The board or, upon the board’s authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards’ rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account. The board shall then distribute all funds collected under this subsection (4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities;

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races;

(j) conduct and supervision of parimutuel facilities, parimutuel networks, simulcast parimutuel networks, and parimutuel wagering on fantasy sports leagues conducted at parimutuel facilities;

(k) conduct and supervision of match bronc rides and wild horse rides; and

(l) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.”

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

Approved April 29, 2011

CHAPTER NO. 295

[SB 75]

AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO ESTABLISH ALTERNATIVE OFFICE HOURS; AMENDING SECTION 2-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-16-117, MCA, is amended to read:

“2-16-117. Office hours. (1) Unless otherwise provided by law, state executive branch offices must be open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except on Saturdays, Sundays, and holidays. Each office must also be open at other times as the accommodation of the public or the proper transaction of business requires.

(2) The state treasurer may, in the interest of safekeeping funds, securities, and records, close the state treasurer’s office from noon to 1 p.m. each day.

(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends.

(4) *The department of revenue may establish alternative office hours for its offices located in the various counties if:*

(a) the office is staffed by four or fewer full-time employees;

(b) the department holds a public hearing on the alternative office hours in the county seat after providing public notice in a newspaper of general circulation published in the county at least 2 weeks prior to the hearing;

(c) the county commissioners of a county in which the department employees are located in a county building approve the proposed alternative office hours if the alternative hours are outside of the county’s normal business hours;

(d) the alternative office hours are adopted by administrative rule; and

(e) the office hours adopted pursuant to subsection (4)(d) are published at least two times a year in a newspaper of general circulation published in the county where the office is located.”

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

Approved April 29, 2011

CHAPTER NO. 296

[SB 81]

AN ACT REVISING COMMERCIAL DRIVER LICENSING LAWS TO CONFORM TO CHANGES IN FEDERAL MOTOR VEHICLE SAFETY ADMINISTRATION REGULATIONS; CREATING RECORDKEEPING REQUIREMENTS FOR MEDICAL CERTIFICATE EXPIRATION DATES AND INFORMATION FOR CERTAIN COMMERCIAL DRIVERS;

AUTHORIZING LICENSE DOWNGRADE IN CERTAIN CIRCUMSTANCES; REVISING CERTAIN LICENSE SUSPENSION PROVISIONS; AMENDING SECTIONS 61-1-101, 61-5-112, 61-5-221, 61-8-102, 61-8-801, 61-8-803, 61-8-812, 61-11-102, AND 61-11-105, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Self-certification of operation status — medical certificate submission and tracking — notice of expiration — downgrade of license. (1) The department may not issue or renew a commercial driver's license unless the person applying for the license:

(a) certifies to the department the status of operation or expected operation of the commercial motor vehicle as being either nonexcepted interstate commerce or excepted interstate commerce, as those terms are described in 49 CFR 383.71, or intrastate commerce; and

(b) when nonexcepted interstate commerce is certified, submits to the department a current medical examiner's certificate as prescribed in 49 CFR, part 391, or when intrastate commerce is certified, submits to the department a current medical examiner's certificate as prescribed in 49 CFR, part 391, or a medical statement as prescribed by department rule.

(2) The department may not issue a commercial driver's license to a person seeking to transfer a valid commercial driver's license issued by another state driver licensing authority unless the requirements of subsection (1)(a) are met, and if the driver certifies to nonexcepted interstate commerce operation, the department shall check the person's CDLIS driver record to verify that the person's medical certification status is "certified".

(3) The department shall mail to the holder of a commercial driver's license certified for nonexcepted interstate commerce a notice of pending medical certificate expiration no earlier than 60 days and no later than 30 days prior to the expiration date of the current medical certificate. The department shall mail the notice to the Montana mailing address shown on the commercial driver's license or, if more recent, the mailing address updated pursuant to 61-3-119 and 61-5-115.

(4) On or before the expiration date of the current medical certificate, the holder of a commercial driver's license certified for nonexcepted interstate commerce shall submit a new medical certificate to the department.

(5) If a new medical certificate is not submitted as required in subsection (4), the department shall, within 10 days of expiration of the current medical certificate:

(a) update the CDLIS driver record to a status of "not certified";

(b) downgrade the person's commercial driver's license; and

(c) notify the person of the status change and the license downgrade on the CDLIS driver record.

(6) The department may reinstate a commercial driver's license that was downgraded under subsection (5) if, within the original term of the downgraded license, the person:

(a) submits a current medical certificate to the department;

(b) certifies to a change in operation status to excepted interstate; or

(c) certifies to a change in operation status to intrastate and submits either a current medical examiner's certificate as prescribed in 49 CFR, part 391, or a medical statement as prescribed by department rule.

(7) Within 10 days of issuance, transfer, renewal, downgrade, or upgrade of a commercial driver's license, the department shall update the CDLIS driver record for the license holder in accordance with the requirements of 49 CFR, part 383.

(8) A downgrade or subsequent upgrade of a CDLIS driver record pursuant to this section is an electronic transaction. The department may not require the surrender or replacement of a commercial driver's license under this section unless the license is expired.

(9) Unless the commercial driver's license is expired, the department may not require a license holder to take the knowledge and road or skills tests required under 61-5-110 or 61-5-111 to reinstate the commercial driver's license pursuant to subsection (6).

Section 2. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "*CDLIS driver record*" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

~~(6)~~(7) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor

vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

~~(7)~~(8) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

~~(8)~~(9) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in ~~61-8-801~~.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection ~~(8)~~ (9):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

~~(9)~~(10) "Commission" means the state transportation commission.

~~(10)~~(11) "Custom-built motorcycle" means a motorcycle that is equipped with:

- (a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;
- (b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

~~(11)~~(12) "Custom vehicle" means a motor vehicle other than a motorcycle that:

- (a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or
- (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and
- (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(12)~~(13) "Customer identification number" means:

- (a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;
- (b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;
- (c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections ~~(12)(a)~~ (13)(a) through ~~(12)(e)~~ (13)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

~~(13)~~(14) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

- (i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;
- (ii) employees of the persons included in subsection ~~(13)(b)(i)~~ (14)(b)(i) when engaged in the specific performance of their duties as employees; or
- (iii) public officers while performing or in the operation of their duties.

~~(14)~~(15) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

~~(15)~~(16) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

~~(16)~~(17) “Dolly or converter gear” means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

~~(17)~~(18) “Domiciled” means a place where:

- (a) an individual establishes residence;
- (b) a business entity maintains its principal place of business;
- (c) the business entity’s registered agent maintains an address; or
- (d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

~~(19)~~ “Downgrade” means the removal of a person’s privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that person.

~~(18)~~(20) “Driver” means a person who drives or is in actual physical control of a vehicle.

~~(19)~~(21) “Driver’s license” means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

- (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
- (c) any nonresident’s driving privilege;
- (d) a motorcycle endorsement; or
- (e) a commercial driver’s license.

~~(20)~~(22) “Electric personal assistive mobility device” means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

~~(21)~~(23) “For hire” means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

~~(22)~~(24) “Gross vehicle weight” means the weight of a vehicle without load plus the weight of any load on the vehicle.

~~(25)~~ “Hazardous material” means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

~~(23)~~(26) “Highway” or “public highway” means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(24)~~(27) “Highway patrol officer” means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(25)~~(28) “Implement of husbandry” means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner’s agricultural operations.

~~(26)~~(29) “Kit vehicle” is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

~~(27)~~(30) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

~~(28)~~(31) "Manufactured home" has the meaning provided in 15-24-201.

~~(29)~~(32) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

~~(30)~~(33) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(31)~~(34) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

~~(32)~~(35) "Mobile home" or "house trailer" has the meaning provided in 15-24-201.

~~(33)~~(36) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(34)~~(37) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(35)~~(38) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(36)~~(39) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(37)~~(40) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(38)~~(41) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(39)~~(42) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(40)~~(43) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; and

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(41)~~(44) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(42)~~(45) "Nonresident" means a person who is not a Montana resident.

~~(43)~~(46) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(44)~~(47) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

~~(45)~~(48) "Operator" means a person who is in actual physical control of a motor vehicle.

~~(46)~~(49) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

~~(47)~~(50) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

~~(48)~~(51) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(49)~~(52) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole

or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(50)~~(53) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(51)~~(54) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(52)~~(55) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(53)~~(56) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(54)~~(57) "Recreational vehicle" includes a motor home, travel trailer, or camper.

~~(55)~~(58) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(56)~~(59) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(57)~~(60) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(58)~~(61) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

~~(59)~~(62) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(60)~~(63) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(61)~~(64) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(62)~~(65) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

~~(63)~~(66) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(64)~~(67) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(65)~~(68) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(66)~~(69) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(67)~~(70) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(68)~~(71) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(69)~~(72) (a) "Stop", when required, means complete cessation from movement.

(b) “Stop”, “stopping”, or “standing”, when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(70)~~(73) “Storage lot” means property owned, leased, or rented by a dealer that is not contiguous to the dealer’s established place of business where a motor vehicle from the dealer’s inventory may be placed when space at the dealer’s established place of business is not available.

~~(71)~~(74) “Street” means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(72)~~(75) “Street rod” means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer’s original design or has a body constructed from nonoriginal materials.

~~(73)~~(76) “Suspension” means the temporary withdrawal by action of the department of a person’s driver’s license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver’s license for a period of time designated by law.

~~(74)~~(77) “Temporary registration permit” means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(75)~~(78) “Traffic” means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(76)~~(79) (a) “Trailer” means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(77)~~(80) “Transaction summary receipt” means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(78)~~(81) “Travel trailer” means a vehicle:

- (a) that is 40 feet or less in length;
- (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;
- (c) with gross trailer area of less than 320 square feet; and
- (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(79)~~(82) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(80)~~(83) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(81)~~(84) "Under the influence" has the meaning provided in 61-8-401.

~~(82)~~(85) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(83)~~(86) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(84)~~(87) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(85)~~(88) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(86)~~(89) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(87)~~(90) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 3. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in 61-1-101~~(8)(b)(ii)~~~~(9)(b)(ii)~~."

Section 4. Section 61-5-221, MCA, is amended to read:

"61-5-221. Authority to revoke or remove hazardous materials endorsement. (1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials, as defined in 61-8-801, *material* in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system."

Section 5. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, and an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers an hour, on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101~~(8)(b)~~ (9)(b).

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 6. Section 61-8-801, MCA, is amended to read:

"61-8-801. Purpose — definition. (1) The purpose of this part is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the

privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are not qualified.

(2) To fulfill this purpose, the legislature intends that this part:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial driver licensing with federal regulations based on the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, as amended.

~~(3) As used in this part, "hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported.~~

Section 7. Section 61-8-803, MCA, is amended to read:

"61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding or required to hold a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding ~~in excess of 15 or more~~ miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; ~~or~~

(h) operating a commercial motor vehicle without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported; *or*

(i) using a mobile device to send text messages while operating a commercial motor vehicle in violation of a state or local law or ordinance on motor vehicle traffic control.

(3) A person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense

that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.”

Section 8. Section 61-8-812, MCA, is amended to read:

“61-8-812. Operation of out-of-service vehicle — criminal and civil penalties — suspension of commercial driver’s license. (1) A person may not operate a commercial motor vehicle during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order issued under state or federal authority.

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) (a) In addition to the misdemeanor penalties provided in subsection (2) and suspension of the person’s commercial driver’s license as provided in subsection (4), a person who violates an out-of-service order issued under state or federal authority is subject to a civil penalty of not less than \$1,100 or more than \$2,750.

(b) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is the county in which the violation occurred or in the first judicial district.

(c) A civil penalty collected under this section must be deposited in the state general fund.

(4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver’s license has been convicted of violating an out-of-service order, the department shall suspend the person’s commercial driver’s license for:

(a) 6 months for a first conviction;

(b) ~~1 year~~ 2 years for a second conviction if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and

(c) 3 years:

(i) for a second conviction if the vehicle:

(A) being operated at the time of the violation was transporting placardable hazardous materials; or

(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

(ii) for a third or subsequent conviction.

(5) For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.

(6) A temporary or probationary commercial driver’s license may not be issued while a commercial driver’s license is suspended under subsection (4).”

Section 9. Section 61-11-102, MCA, is amended to read:

“61-11-102. Records to be kept by department. (1) Except as provided in subsection (6) (8), the department shall create and maintain a central database of electronic files that includes an individual Montana driving record for each person:

(a) who has been issued a Montana driver's license;

(b) who does not have a driver's license from, or active driving record in, another jurisdiction and for whom the department receives a report of conviction of a traffic violation or an offense requiring suspension or revocation of the person's driver's license; and

(c) whose driver's license or driving privileges have been suspended, revoked, canceled, or otherwise withdrawn by the department.

(2) ~~(a)~~ An individual Montana driving record maintained under this section must include:

~~(i)~~(a) personal information obtained from the application for a driver's license or a report of conviction;

~~(ii)~~(b) the person's driver's license number, license type, status, endorsements, restrictions, issue and expiration dates, and any suspensions, revocations, disqualifications, or cancellations that have been imposed against the person;

~~(iii)~~(c) all convictions reported to the department for the person; and

~~(iv)~~(d) traffic accidents in which the person was involved, except that a record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) (a) *The department shall create and maintain a CDLIS driver record for each person who has been issued a Montana commercial driver's license or for whom a record of conviction, disqualification, or other licensure action has been taken for violations of any state or local law relating to motor vehicle traffic regulation, other than a parking violation, committed while operating a commercial motor vehicle.*

(b) *A CDLIS driver record maintained by the department must meet the requirements of 49 CFR 384.225.*

~~(b)~~(c) If the department receives notice that a person has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the ~~person's individual Montana driving~~ CDLIS driver record.

~~(e)~~(4) The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.

~~(3)~~(5) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward, by electronic or other means, a report of the conviction to the motor vehicle administrator in the state in which the person is a resident or licensed.

~~(4)~~(6) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

~~(5)~~(7) (a) Except as provided in subsection ~~(5)(b)~~ (7)(b), a reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the reproduction of the information is signed by a named custodian of the record and the following certification appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(5), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed:.....

(Print Full Name)

(b) An order, record, or paper generated from the department's central database of electronic files of individual Montana driving records may be certified electronically by the generating computer. The certification must be a certification of the order, record, or paper as it appeared on a specific date.

(c) A court, an office of a clerk of court, or an attorney licensed to practice law in this state may receive and use a computer-generated individual Montana driving record as evidence without further foundation when:

(i) the individual Montana driving record is electronically transmitted from the department's central database of electronic individual Montana driving records to a department-authorized terminal device maintained by the court, the office of the clerk of court, or the attorney; and

(ii) the judge, an officer of the court, or the attorney certifies that the record was not altered in any way.

~~(6)~~(8) The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable."

Section 10. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, containing the following data:

(a) the driver's or licensee's name, driver's license number, and date of birth;

(b) driver's license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;

(c) convictions of the driver or licensee; and

(d) traffic accidents in which the driver or licensee was involved.

(2) The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.

(3) (a) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(b) *The department may not disclose medical certification status, driver self-certification status, or medical certificate information from a CDLIS driver record as part of an individual Montana driving record except as expressly authorized under 49 CFR 384.225.*

(4) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(5) (a) Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of \$4 must be paid for each individual Montana driving record requested. A fee of \$10 must be paid if a certified Montana record, as provided in 61-11-102~~(5)~~(7), is requested. A fee of 6 cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.

(b) An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in 61-11-510(3) and subsection (5) of this section, an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester through a point of entry for electronic government services are subject to the convenience fee established under 2-17-1103.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use a point of entry for electronic government services to obtain the record or data.”

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

Section 12. Direction to code commissioner. Sections 61-5-220 and 61-5-221 are intended to be renumbered and codified as an integral part of Title 61, chapter 5, part 1.

Section 13. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective January 30, 2012.

(2) [Sections 7 and 8] are effective January 1, 2012.

(3) [Sections 11 and 12] and this section are effective October 1, 2011.

Approved April 29, 2011

CHAPTER NO. 297

[SB 87]

AN ACT AUTHORIZING FORGIVENESS OF LOAN PRINCIPAL AND EXPENDITURE OF FUNDS TO MEET OTHER FEDERAL INCENTIVES, CONDITIONS, AND REQUIREMENTS IN THE WATER POLLUTION CONTROL AND DRINKING WATER STATE REVOLVING FUNDS; AMENDING SECTIONS 75-5-1107 AND 75-6-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-5-1107, MCA, is amended to read:

“75-5-1107. (Temporary) Uses of revolving fund. (1) Money in the revolving fund ~~must~~ *may* be used to:

(a) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

(b) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(c) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(d) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(e) provide loan guarantees for similar revolving funds established by municipalities;

(f) earn interest on fund accounts; ~~and~~

(g) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act; *and*

(h) provide additional subsidization to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.

(2) Money received by the state under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as capitalization grants for a state revolving fund may be used by the department or the department of natural resources and conservation to provide additional subsidization to eligible recipients in the form of forgiveness of the principal of a loan to the extent permitted or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113. (Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

75-5-1107. (Effective July 1, 2011) Uses of revolving fund. Money in the revolving fund ~~must~~ *may* be used to:

(1) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; ~~and~~

(7) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act; *and*

(8) *provide additional subsidization to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.*"

Section 2. Section 75-6-212, MCA, is amended to read:

"75-6-212. Use of revolving fund. (1) Money in the revolving fund may be used to:

(a) make loans to community water systems and nonprofit noncommunity water systems as provided in this part;

(b) buy or refinance the debt obligation of a municipality at an interest rate that does not exceed market rates, provided that the obligations were incurred and construction of the project began after July 1, 1993;

(c) guarantee or purchase insurance in order to enhance credit or reduce interest rates for obligations of municipalities that are issued to finance eligible projects;

(d) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(e) pay reasonable administrative costs of the program, not to exceed 4% of the annual capitalization grant or the maximum amount allowed under the federal act;

(f) if matched by an equal amount of state funds, pay the department's costs in an amount not to exceed 10% of the annual capitalization grant for the following:

(i) public water system supervision programs;

(ii) administering or providing technical assistance through source water protection programs;

(iii) developing and implementing a capacity development strategy under section 300g-9 of the federal act (42 U.S.C. 300g-9); and

(iv) administering an operator certification program in order to meet the requirements of section 300g-8 of the federal act (42 U.S.C. 300g-8);

(g) pay the costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons. No less than 1.5% of the annual capitalization grant must be contracted by the department to private organizations or individuals for the purposes of this subsection.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business; *and*

(i) *provide additional subsidization, separate and apart from loan subsidies for disadvantaged communities provided in 75-6-226, to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans provided for in 75-6-224 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.*

(2) Except as provided in subsection (3), money in the fund may not be used for:

(a) expenditures related to monitoring, operation, and maintenance;

(b) the acquisition of real property or any interest in real property, unless the acquisition is integral to a project authorized under this part and the purchase is from a willing seller;

(c) providing assistance to a public water system that:

(i) does not have the financial, managerial, and technical capability to ensure compliance with the requirements of the federal act; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance; or

(d) any other activity prohibited from funding under the federal act.

(3) (a) A public water system described in subsection (2)(c) may receive assistance under this part if:

(i) the use of the assistance will ensure compliance; and

(ii) for a system that the department has determined does not have the financial, managerial, or technical capability to ensure compliance with the federal act, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, as determined necessary by the department to ensure compliance.

(b) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of subsection (2)(c)(i) apply to the system.”

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

Approved April 29, 2011

CHAPTER NO. 298

[SB 99]

AN ACT AUTHORIZING PAYMENT OF A COMMISSION TO LICENSE AGENTS WHO SELL TICKETS FOR CERTAIN HUNTING LICENSE LOTTERIES; AMENDING SECTIONS 87-1-271 AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-1-271, MCA, is amended to read:

“87-1-271. Annual lottery of hunting licenses — proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

- (a) deer;
- (b) elk;
- (c) shiras moose;
- (d) mountain sheep;
- (e) mountain goat;
- (f) wild buffalo or bison;
- (g) antelope; and
- (h) mountain lion.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive

another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:

- (a) the conduct of the lottery authorized in this section;
- (b) the use of licenses issued through the lottery; and
- (c) the price of lottery tickets.

(4) ~~All~~ *Except as provided in 87-2-903, all* proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access enhancement programs and law enforcement.”

Section 2. Section 87-2-903, MCA, is amended to read:

“87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, plus any additional amount as determined *under subsection (9) and* by rules adopted pursuant to subsection ~~(9)~~ *(10)*.

(2) A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.

(3) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission and convenience fee.

(4) Each license agent shall submit to the department copies of each paper license sold.

(5) The department may charge license agents appointed after March 1, 1998, an electronic license system fee not to exceed actual costs.

(6) The department may designate classes of license agents and may establish a protocol for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(7) For purposes of this section, the term “transaction” includes the sale of any license or permit, collection of any data or fee, or issuance of any certificate prescribed by the department.

(8) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate commission and convenience fee, by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 may be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(9) A license agent, except for an electronic service provider, must receive a commission of 50 cents for each ticket the agent processes for a hunting license lottery held pursuant to 87-1-271.

~~(9)~~*(10) The department may adopt rules necessary to implement this section.”*

Section 3. Effective date. [This act] is effective March 1, 2012.

Approved April 29, 2011

CHAPTER NO. 299

[SB 173]

AN ACT CLARIFYING THAT NOISES RESULTING FROM SHOOTING ACTIVITIES AT SHOOTING RANGES MAY NOT BE CONSIDERED TO BE PUBLIC NUISANCES; AND AMENDING SECTION 27-30-101, MCA.

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

Section 1. Section 27-30-101, MCA, is amended to read:

“27-30-101. Definition of nuisance. (1) Anything ~~which~~ *that* is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or ~~which that~~ unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing ~~which that~~ is done or maintained under the express authority of a statute ~~can~~ *may* be deemed a *public or private* nuisance.

(3) ~~No~~ *An* agricultural or farming operation, *a* place, *an* establishment, or *a* facility or any of its appurtenances or the operation ~~thereof is or becomes~~ *of those things is not or does not become* a public or private nuisance because of ~~the its~~ normal operation ~~thereof~~ as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(4) *Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.”*

Approved April 29, 2011

CHAPTER NO. 300

[SB 195]

AN ACT REVISING LAWS RELATING TO THE MONTANA SEED LABORATORY; CREATING A SEED LABORATORY ADVISORY BOARD; ALLOWING THE LABORATORY TO DETERMINE APPROPRIATE FEES FOR THE COSTS OF SEED ANALYSIS; AMENDING SECTIONS 20-25-229, 80-5-126, 80-5-128, AND 80-5-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Seed laboratory advisory board — duties. (1) There is a seed laboratory advisory board.

(2) (a) The board consists of:

(i) five members appointed by the director of the agricultural experiment station provided for in 20-25-222; and

(ii) the director of the agricultural experiment station, serving in an ex officio, nonvoting capacity.

(b) The five members appointed by the director of the agricultural experiment station must be selected as follows:

(i) three representatives from seed industry-related organizations;

(ii) a representative of the department of agriculture; and

(iii) a representative of the agricultural experiment station.

(c) The members appointed as representatives of seed industry-related organizations may not represent the same organization.

(3) The board shall advise the director of the agricultural experiment station on matters related to the Montana seed laboratory provided for in 20-25-229, including but not limited to:

(a) rates to be charged for seed analysis;

(b) staffing levels;

(c) budget matters; and

(d) operational procedures for the laboratory.

(4) The board shall meet at least annually and may meet more frequently as needed.

(5) Board members may request reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503. The ex officio member is not entitled to travel expenses.

(6) The board is attached to the agricultural experiment station for administrative purposes. The agricultural experiment station shall establish operating procedures for the board that are consistent with the provisions of this section.

Section 2. Section 20-25-229, MCA, is amended to read:

“20-25-229. Montana seed laboratory — purpose — fees. (1) There is established as a part of the agricultural experiment station the Montana seed laboratory.

(2) The purpose of the laboratory ~~shall be the carrying on of~~ *is to conduct* effective scientific and practical research ~~and or~~ testing work to develop as complete and accurate ~~a knowledge an analysis~~ of grains and seeds as ~~possible requested~~.

(3) The laboratory ~~shall be~~ *is* under the general direction of the director of the agricultural experiment station.

(4) *The laboratory shall:*

(a) *establish procedures for submitting seed samples for analysis; and*

(b) *determine the appropriate fees for analytical services provided by the laboratory.”*

Section 3. Section 80-5-126, MCA, is amended to read:

“80-5-126. Analysis by seed laboratory — reports. The seed laboratory of the agricultural experiment station shall analyze and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station ~~and the department determine~~ *determines*. The laboratory shall report to the department all violations as they appear. It may also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department.”

Section 4. Section 80-5-128, MCA, is amended to read:

“80-5-128. Laboratory testing of samples — fees. (1) Any citizen of this state may request *that* the seed laboratory ~~to~~ examine, analyze, ~~and or~~ test samples of seed upon payment of the fee and compliance with ~~rules~~ *procedures* governing the submission of seed samples for that service.

(2) Samples of seed analyzed and tested must be charged for at rates established by rule of the department as recommended by the agricultural experiment station *the seed laboratory as provided in 20-25-229.*

(3) All fees collected by the seed laboratory must be used to defray the expenses incurred by the laboratory under this chapter *and the expenses incurred by the seed laboratory advisory board provided for in [section 1].*”

Section 5. Section 80-5-139, MCA, is amended to read:

“80-5-139. Rules — promulgated by department. (1) The department is authorized to promulgate necessary rules as authorized by this part. All rules are to be promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

(2) Rules may address but are not limited to the following subjects:

(a) designation of kinds of seed as agricultural, vegetable, flower, or indigenous;

(b) designation of kinds of seed that must be labeled as to variety name;

(c) designation of kinds and varieties of flower seeds that may be labeled according to type and performance characteristics;

(d) standards for determining and stating pure live seed, germination, or viability;

(e) plants to be designated as weeds, restricted weeds, and prohibited weeds and standards for allowing weeds and restricted weeds in seeds;

(f) procedures for implementing the administrative provisions of 80-5-136;

(g) procedures for implementing and administering civil penalties, including establishing a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under 80-5-136;

(h) procedures for submitting applications for licensing and establishing the period for which licenses are issued under 80-5-130;

(i) minimum standards for equipment and handling procedures for facilities that require licensing, including sellers and distributors of agricultural seed, seed labelers, and conditioning plants;

(j) standards that restrict or exempt from restriction the holding and movement of screenings, when in the public interest; *and*

(k) recordkeeping requirements for persons who handle agricultural, vegetable, flower, or indigenous seeds, including file samples of seed for each lot handled for a period of time up to 2 years.

~~(3) The department may promulgate rules related to the operation of the state seed laboratory. The rules may include but are not limited to procedures for submitting seed samples and rates charged for seed analysis.”~~

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to [section 1].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 301

[SB 234]

AN ACT REVISING THE CONDITIONS UNDER WHICH A MUNICIPALITY MAY PROVIDE GARBAGE AND SOLID WASTE SERVICES; AMENDING SECTIONS 7-2-4736 AND 7-13-4107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-2-4736, MCA, is amended to read:

“7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. ~~(1) A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by *within the service area* of a motor carrier authorized by the public service commission to conduct such provide that service may not provide *exclusive competitive or similar* garbage and solid waste disposal service or *impose charges or assessments for services not provided* to any person or business located in the *annexed or incorporated area for 5 years following annexation* except:~~

~~(a) upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; or~~

~~(b) after the expiration of 5 years, if a majority of the residents of the annexed or incorporated area sign a petition requesting the municipality to provide the service.~~

~~(2) If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or, after the expiration of 5 years, if a majority of the residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.~~

~~(3) For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services. *except upon a proper showing to the public service commission that the existing carrier is unable to or refuses to provide adequate service to the annexed or incorporated area.*”~~

Section 2. Section 7-13-4107, MCA, is amended to read:

“7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide that service may not, by ordinance or otherwise, elect to *elect to* provide exclusive garbage and solid waste service ~~unless until~~ the municipality *pays first fully compensates* the private motor carrier *for the resulting damage to its business. fair market value for the carrier’s equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier must be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.*”

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

Approved April 29, 2011

CHAPTER NO. 302

[SB 267]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY LOAD PROGRESS TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-703, MCA.

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

Section 1. Section 75-5-703, MCA, is amended to read:

“75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

~~(3) Within 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The department shall establish a schedule for completing the TMDLs within the 15-year period established by this subsection. The department shall establish a schedule must also provide that provides a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702 on the most recent list prepared pursuant to 75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list to the environmental quality council.~~

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue if those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312.”

Approved April 29, 2011

CHAPTER NO. 303

[SB 296]

AN ACT INCREASING THE CIVIL PENALTY FOR VIOLATION OF THE MONTANA QUARANTINE AND PEST MANAGEMENT ACT; AMENDING SECTION 80-7-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-7-404, MCA, is amended to read:

“80-7-404. Penalty. (1) A person who violates the quarantines, procedures, or rules of the department adopted under 80-7-402 commits a civil offense and is subject to a civil penalty of not more than ~~\$1,000~~ \$5,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this part. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed ~~\$1,000~~ \$5,000, for initial and subsequent offenses; and

(b) other matters necessary for the enforcement of civil penalties.

(4) This section may not be construed as requiring the department or its agents to report violations of 80-7-402 when the department believes that the public interest will be best served by a suitable notice of warning.”

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

Approved April 29, 2011

CHAPTER NO. 304

[SB 311]

AN ACT CLARIFYING THE TERMS OF OFFICE AND YEARS SERVED FOR OFFICIALS ELECTED TO AND CANDIDATES SEEKING NOMINATION FOR OFFICES THAT ARE CONSTITUTIONALLY TERM-LIMITED; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTION 13-10-201, MCA.

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

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

“13-10-201. Declaration for nomination — term limitations. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

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

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

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

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

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

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

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

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

(6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1), a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

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

(8) *For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:*

(a) *A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is*

elected or for which the candidate seeks election and end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) *A year is considered to start on January 1 and end on the following December 31.*

(c) *“Current term”, as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214.”*

Approved April 29, 2011

CHAPTER NO. 305

[SB 340]

AN ACT CLARIFYING COUNTY ENFORCEMENT RELATED TO A PERSON, ENTITY, OR REPRESENTATIVE OF A PERSON OR ENTITY THAT HAS ENTERED INTO A FIRE HAZARD REDUCTION AGREEMENT; AMENDING SECTION 7-33-2205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-33-2205, MCA, is amended to read:

“7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) (a) *The Subject to the provisions of Title 76, chapter 13, part 1, the county governing body may in its discretion establish fire controlled burning seasons annually, during which, subject to 76-13-121, a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any residential or commercial property, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit or permission to ignite or set a fire from the recognized protection agency for that protection area.*

(b) *If a person, entity, or representative of a person or entity has entered into a fire hazard reduction agreement pursuant to Title 76, chapter 13, part 4, and is complying with that agreement, open burning may be conducted, subject to 76-13-121, between October 1 and April 30 without obtaining a written permit or permission to set a fire. The person, entity, or representative of a person or entity shall:*

(i) *obtain air quality and ventilation forecasts before igniting or setting the fire; and*

(ii) *notify the county of the location of the burn area.*

(2) A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.

(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire, as provided in 50-63-103.”

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

Approved April 29, 2011

CHAPTER NO. 306

[SB 376]

AN ACT EXTENDING THE MATURITY DATE TIME LIMIT ON CERTAIN UNITED STATES TREASURY BILLS, NOTES, AND BONDS USED AS SECURITY FOR SCHOOL DISTRICT CONSTRUCTION BONDS; AMENDING SECTION 7-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-6-202, MCA, is amended to read:

“7-6-202. Investment of public money in direct obligations of United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

- (i) federal home loan bank;
- (ii) federal national mortgage association;
- (iii) federal home mortgage corporation; and
- (iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of “money market mutual funds”, showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) Except as provided in ~~subsection~~ *subsections (5) and (6)*, an investment authorized in this part may not have a maturity date exceeding 5 years, except

when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.

(6) *An investment in zero-coupon United States government treasury bills, notes, and bonds purchased as a sinking fund investment for a balloon payment on qualified construction bonds described in 17-5-116(1) may have a maturity date exceeding 5 years if:*

(a) *the maturity date of the United States government treasury bills, notes, and bonds is on or before the date of the balloon payment; and*

(b) *the school district trustees provide written consent.*

(6)(7) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.”

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

Approved April 29, 2011

CHAPTER NO. 307

[HB 627]

AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATING TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 9] may be cited as the “Parental Notice of Abortion Act of 2011”.

Section 2. Legislative purpose and findings. (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician’s best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of [sections 1 through 9] is to further the important and compelling state interests of:

- (a) protecting minors against their own immaturity;
- (b) fostering family unity and preserving the family as a viable social unit;
- (c) protecting the constitutional rights of parents to rear children who are members of their household; and
- (d) reducing teenage pregnancy and unnecessary abortion.

Section 3. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Actual notice" means the giving of notice directly in person or by telephone.

(2) "Coerce" means to restrain or dominate the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-3-438.

(4) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(5) "Minor" means a female under 16 years of age who is not an emancipated minor.

(6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(8) "Sexual abuse" has the meaning given in 41-3-102.

Section 4. Notice of parent required. A physician may not perform an abortion upon a minor unless the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor of the physician's intention to perform the abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided in [section 5].

Section 5. Alternative notification. In lieu of the actual notice required by [section 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on which regular mail delivery takes place after mailing.

Section 6. Exceptions. Notice is not required under [section 4 or 5] if:

(1) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide notice;

(2) notice is waived, in writing, by the person entitled to notice; or

(3) notice is waived under [section 8].

Section 7. Coercion prohibited. A parent, a guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

Section 8. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) The minor may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds that the petitioner is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

Section 9. Criminal and civil penalties. (1) A person convicted of performing an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 9] do not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than \$500 and not more than \$50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5 years, or both.

(4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as provided in [section 6(2)] is guilty of a misdemeanor.

Section 10. Section 41-1-405, MCA, is amended to read:

“41-1-405. Emergencies and special situations. (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50, chapter 20, part 2~~ [sections 1 through 9].”

Section 11. Section 47-1-104, MCA, is amended to read:

“47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense. (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) ~~Beginning July 1, 2006, when~~ *When* a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) ~~Beginning July 1, 2006, a~~ A court may order the office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in ~~50-20-212~~ *[section 8]*;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 12. Repealer. The following sections of the Montana Code Annotated are repealed:

- 50-20-201. Short title.
- 50-20-202. Legislative purpose and findings.
- 50-20-203. Definitions.
- 50-20-204. Notice of parent required.
- 50-20-205. Alternate notification.
- 50-20-208. Exceptions.
- 50-20-209. Coercion prohibited.
- 50-20-211. Reports.
- 50-20-212. Procedure for judicial waiver of notice.
- 50-20-215. Criminal and civil penalties.

Section 13. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 9].

Section 14. Coordination instruction. If both Senate Bill No. 97 and [this act] are passed and approved, then [this act] is void.

Section 15. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 16. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

- FOR requiring parental notification prior to abortion for a minor, providing for judicial waiver of notification, repealing prior statutes, and providing penalties.
- AGAINST requiring parental notification prior to abortion for a minor, providing for judicial waiver of notification, repealing prior statutes, and providing penalties.

CHAPTER NO. 308

[HB 638]

AN ACT DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Certain state services denied to illegal aliens. (1) To the extent allowed by federal law and the Montana constitution and notwithstanding any other state law, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

(2) To determine whether an applicant for a state service is an illegal alien, the agency may use the systematic alien verification for entitlements program provided by the United States department of homeland security or any other lawful method of making the determination.

(3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the United States department of homeland security or its successor of any illegal alien applying for a state service.

(4) An agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status.

(5) A state agency shall execute any written agreement required by federal law to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Agency" means a department, board, commission, committee, authority, or office of the legislative or executive branches of state government, including a unit of the Montana university system.

(b) "Illegal alien" means an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States.

(c) "State service" means a payment of money, the grant of a state license or permit, or the provision of another valuable item or service under any of the following programs and provisions of law:

(i) employment with a state agency;

(ii) qualification as a student in the university system for the purposes of a public education, as provided in 20-25-502;

(iii) student financial assistance, as provided in Title 20, chapter 26;

(iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;

(v) unemployment insurance benefits, as provided in Title 39, chapter 51;

(vi) vocational rehabilitation, as provided in Title 53, chapter 7;

(vii) services for victims of crime, as provided in Title 53, chapter 9;

(viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;

(ix) a grant, as provided in Title 90.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 4, and the provisions of Title 1, chapter 1, part 4, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 534 is passed and approved, then [this act] is void.

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

Section 5. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 6. Applicability. [This act] applies to the provision of a state service, as defined in [section 1], applied for or intended to be made on or after January 1, 2013.

Section 7. Submission to the electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

- FOR denying certain state services to illegal aliens.
- AGAINST denying certain state services to illegal aliens.

CHAPTER NO. 309

[SB 172]

AN ACT CLASSIFYING CERTAIN ENERGY STORAGE FACILITIES AS CLASS FOURTEEN PROPERTY; EXEMPTING CLASS FOURTEEN ENERGY STORAGE FACILITIES FROM THE PROVISIONS OF THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, 75-20-104, AND 75-20-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-6-137, MCA, is amended to read:

“15-6-137. Class seven property — description — taxable percentage. (1) Except as provided in subsection (2), class seven property includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a)(1)(c);

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) Class seven property does not include wind generation facilities, and biomass generation facilities, and energy storage facilities classified under 15-6-157.

(3) Class seven property is taxed at 8% of its market value.”

Section 2. Section 15-6-141, MCA, is amended to read:

“15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both; including,

(b) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives; ~~However,~~

(c) rural electric cooperatives' property, except wind generation facilities, ~~and~~ biomass generation facilities, *and energy storage facilities* classified under 15-6-157 *and property used for headquarters, office, shop, or other similar facilities*, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative; ~~is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.~~

~~(b)~~(d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

~~(e)~~(e) centrally assessed companies' allocations except:

- (i) electrical generation facilities classified under 15-6-156;
- (ii) all property classified under 15-6-157;
- (iii) all property classified under 15-6-158 and 15-6-159;
- (iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;
- (v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;
- (vi) railroad transportation property included in 15-6-145;
- (vii) airline transportation property included in 15-6-145; and
- (viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

Section 3. Section 15-6-156, MCA, is amended to read:

"15-6-156. Class thirteen property — description — taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities, ~~and~~ biomass generation facilities, *and energy storage facilities* classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities, ~~and~~ biomass generation facilities, *and energy storage facilities* classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities, ~~and~~ biomass generation facilities, *and energy storage*

facilities classified under 15-6-157, owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified under 15-6-135;

(f) property owned by organizations providing telecommunications services and classified under 15-6-135; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 4. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;

(e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed electric power company;

(f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by any electrical energy producer;

(h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by cooperative rural electric associations described under 15-6-137;

(i) *energy storage facilities of a centrally assessed electric power company;*

(j) *energy storage facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;*

(k) *noncentrally assessed energy storage facilities owned or operated by any electrical energy producer;*

(l) *energy storage facilities owned or operated by cooperative rural electrical associations described under 15-6-137;*

(m) *battery energy storage systems that comply with federal standards on the manufacture and installation of the systems that are owned and operated by an electrical energy storage producer, electrical energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;*

~~(n)~~(n) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(o)~~(o) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(p)~~(p) all property of a biomass gasification facility, as defined in 15-24-3102;

~~(q)~~(q) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection ~~(1)~~(~~1~~)(t) of this section, that sequesters carbon dioxide;

~~(r)~~(r) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(s)~~(s) all property of a geothermal facility, as defined in 15-24-3102;

~~(t)~~(t) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);

~~(u)~~(u) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(v)~~(v) all property of a natural gas combined cycle facility;

~~(w)~~(w) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

~~(x)~~(x) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

~~(y)~~(y) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection

(1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

~~(u)~~(z) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)(u)~~ (1)(z) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property does not include facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

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

(a) "Biomass generation facilities" means any combination of boilers, generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from the burning of organic material other than coal, petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas or other fuels allowed for ignition and to stabilize boiler operations.

(b) (i) "*Compressed air energy storage*" means the conversion of electrical energy to compressed air by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas reservoirs, abandoned mines, and mined rock cavities.

(ii) *The term includes the conversion of compressed air into electrical energy by using turboexpander equipment and electrical generation equipment.*

(c) (i) "*Energy storage facilities*" means hydroelectric pumped storage property, compressed air energy storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy storage facilities directly connected to the electrical power grid and associated property, appurtenant land and improvements, and personal property that are designed to:

(A) receive and store electrical energy as potential energy; and

(B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid, including but not limited to frequency regulation ancillary services and frequency control.

(ii) *The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has a power rating of at least 1 megawatt for a period of at least 0.25 hour.*

(iii) *The term does not include property, including associated property and appurtenant land and improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped storage as defined in subsection (4)(e).*

(d) *“Flywheel storage” means a process that stores energy kinetically in the form of a rotating flywheel. Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel’s integrated electric generator.*

(e) *“Hydroelectric pumped storage” means a process that converts electrical energy to potential energy by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through hydraulic turbines and generate electrical energy.*

(f) *“Regenerative fuel cell” means a device that produces hydrogen and oxygen from electricity and water and alternately produces electrical energy and water from stored hydrogen and oxygen.*

~~(b)~~(g) *“Wind generation facilities” means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.*

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection ~~(1)(s), (1)(t), or (1)(u)~~ (1)(x), (1)(y), or (1)(z), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(s), (1)(t), or (1)(u)~~ (1)(x), (1)(y), or (1)(z), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value.”

Section 5. Section 75-20-104, MCA, is amended to read:

“75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Addition thereto” means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) “Application” means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) “Associated facilities” includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, or biomass generation facility, or *energy storage facility*, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired

easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(vi) *does not include an energy storage facility, as defined in 15-6-157;*

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant, *except that the term does not include a compressed air energy storage facility, as defined in 15-6-157;* or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 6. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter. *The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility is not required under this chapter.*

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 7. Applicability. [Sections 1 through 4] apply to tax years beginning after December 31, 2011.

Approved April 30, 2011

CHAPTER NO. 310

[SB 418]

AN ACT PROHIBITING THE STATE OR FEDERAL GOVERNMENT FROM MANDATING THE PURCHASE OF HEALTH INSURANCE COVERAGE OR IMPOSING PENALTIES FOR DECISIONS RELATED TO THE PURCHASE OF HEALTH INSURANCE COVERAGE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 and 2] may be cited as the “Montana Health Care Freedom Act”.

Section 2. Health insurance purchase mandate prohibited — exceptions. (1) The state or federal government may not:

(a) mandate or require a person or entity to purchase health insurance coverage as defined in 33-22-140; or

(b) impose a penalty, tax, fee, or fine of any type if a person or entity declines to purchase health insurance coverage.

(2) This section does not apply to a requirement to purchase health insurance coverage that is imposed by:

(a) a court when an individual or entity is a named party in a judicial dispute;

(b) the department of public health and human services as part of a child support enforcement action; or

(c) the Montana university system as a requirement for students.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 and 2].

Section 4. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 5. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

- FOR prohibiting the state or federal government from mandating the purchase of health insurance or imposing penalties for decisions related to purchasing health insurance.
- AGAINST prohibiting the state or federal government from mandating the purchase of health insurance or imposing penalties for decisions related to purchasing health insurance.

CHAPTER NO. 311

[SB 426]

AN ACT CREATING THE TREASURE STATE TAXPAYER DIVIDEND PROGRAM; ALLOWING TAXPAYERS A REFUND OF SURPLUS STATE GOVERNMENT FUND BALANCE THROUGH AN INCOME TAX CREDIT; AND PROVIDING THAT THE TAX CREDIT IS BASED UPON THE RELATIVE AMOUNTS OF ALL PROPERTY TAXES PAID ON A CLAIMANT'S PRINCIPAL RESIDENCE AND UPON THE AMOUNT OF INDIVIDUAL INCOME TAXES THAT HAD BEEN PAID BY THE CLAIMANT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Tax credits based on surplus fund balance — property tax — income tax. (1) (a) The department of administration shall certify to the budget director, by August 1 of each year, the amount of unaudited general fund balance in the prior fiscal year as recorded when the prior fiscal year statewide

accounting, budgeting, and human resource system records are closed in July. General fund balance is as recorded in the statewide accounting, budgeting, and human resource system using generally accepted accounting principles in accordance with 17-1-102(2). Tax credits are allowed under this section if the unaudited general fund balance in the fiscal year exceeds 125% of the budgeted general fund balance for that fiscal year [and if the tax rate specified in 15-6-138(3)(a)(ii) has been in effect for at least 1 tax year]. Tax credits are not allowed under this section unless the excess balance is at least \$5 million. One-half of the amount in excess of 125% must be distributed in the form of individual income tax credits related to the property taxes paid on the taxpayer's principal residence and related to the taxpayer's individual income tax paid.

(b) There is a credit against taxes imposed by this chapter equal to the amount determined under subsection (2).

(2) (a) If a tax credit is allowed under subsection (1)(a), the department shall determine the percentage by dividing the amount to be refunded by the amounts of the total collections that are attributable to total statewide property tax that was assessed, other than local option vehicle tax under 61-3-537, and total individual income tax collections for the same fiscal year as the general fund balance.

(b) The property tax share of the excess balance must be reimbursed to property taxpayers based upon an amount of each taxpayer's property taxes paid on the taxpayer's principal residence in the taxpayer's income tax year. To determine the amount, the department shall multiply the percentage determined in subsection (2)(a) by the individual's total property taxes paid on the principal residence in the prior year.

(c) The income tax share of the excess balance must be distributed to taxpayers as a credit under this chapter based upon an amount each taxpayer paid in Montana individual income taxes pursuant to 15-30-2103 in the immediately preceding tax year. To determine the amount, the department shall multiply the percentage determined in subsection (2)(a) by the individual's income taxes paid in the prior year.

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

(4) A claim is not allowed under this section if there are delinquent property taxes owed on the principal residence.

(5) 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 that is taxable under this chapter.

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

(7) As used in this section, the following definitions apply:

(a) "Budgeted general fund balance" is a projected general fund balance calculated by the legislative fiscal analyst by August 1 for each fiscal year. In determining the projected general fund balance, the legislative fiscal analyst shall use the appropriate fiscal year amounts as utilized by the legislature in developing the biennial budget. The fiscal year amounts are anticipated revenues and transfers that include the impacts of enacted legislation, established level of appropriations and transfers, anticipated supplemental appropriations, and anticipated reversions. To calculate the projected balance, the legislative fiscal analyst shall add the unassigned fund balance from the

most recent completed fiscal year plus the anticipated revenues and transfers less the level of appropriations and transfers, supplemental appropriations, and anticipated reversions for the most recent completed fiscal year.

(b) "Principal residence" means a class four residential dwelling that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home that is located in Montana and occupied by the owner for at least 7 months during the tax year and includes as much of the surrounding land, not exceeding 5 acres, as is reasonably necessary for its use as a dwelling.

(8) This section may be cited as the "Treasure State Taxpayer Dividend Program".

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

Section 3. Contingent voidness. If Senate Bill No. 372 is not passed and approved or if Senate Bill No. 372 is rendered void, then the bracketed language in [section 1(1)(a)] is void.

Section 4. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 5. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

- FOR contingently providing taxpayers refunds of surplus state government general fund balance through an income tax credit based upon property and individual income taxes paid.
- AGAINST contingently providing taxpayers refunds of surplus state government general fund balance through an income tax credit based upon property and individual income taxes paid.

CHAPTER NO. 312

[HB 604]

AN ACT PROVIDING FOR FUND TRANSFERS AND AN APPROPRIATION; AUTHORIZING FUND TRANSFERS FROM THE TELECOMMUNICATIONS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT ACCOUNT, THE OLDER MONTANANS TRUST FUND, AND THE FIRE SUPPRESSION ACCOUNT TO THE GENERAL FUND; AUTHORIZING FUND TRANSFERS FROM THE MOTOR VEHICLE AND RECYCLING ACCOUNT, THE ORPHAN SHARE ACCOUNT, THE COAL BED METHANE PROTECTION ACCOUNT, AND THE OIL AND GAS CONSERVATION ACCOUNT TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO SCHOOL DISTRICTS; AUTHORIZING A FUND TRANSFER FROM THE OLDER MONTANANS TRUST FUND TO THE HEALTH AND MEDICAID INITIATIVES ACCOUNT; AUTHORIZING A FUND TRANSFER TO THE OLD FUND WORKERS' COMPENSATION ACCOUNT FROM THE GENERAL FUND AND THE OLD FUND LIABILITY ACCOUNT; REVISING THE TRANSFER TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT FOR FISCAL YEARS 2012 AND 2013; IMPOSING A PREMIUM FEE ON CERTAIN WORKERS' COMPENSATION POLICIES; CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-35-108, ~~39-71-2352,~~

52-3-115, 53-19-310, 75-10-532, 75-10-743, 76-13-150, 76-15-904, AND 82-11-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND TERMINATION DATES.

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

Section 1. Transfer of funds to guarantee account. (1) By August 15, 2011, the state treasurer shall transfer \$2.5 million from the account that is established for the motor vehicle recycling and disposal program under the provisions of 75-10-532 to the guarantee account provided for in 20-9-622.

(2) By August 15, 2011, the state treasurer shall transfer \$4.4 million from the orphan share account provided for in 75-10-743 to the guarantee account provided for in 20-9-622.

(3) By August 15, 2011, the state treasurer shall transfer \$8.5 million from the coal bed methane protection account provided for in 76-15-904 to the guarantee account provided for in 20-9-622.

(4) By August 15, 2011, the state treasurer shall transfer \$12 million from the board of oil and gas conservation account provided for in 82-11-135 to the guarantee account provided for in 20-9-622.

Section 2. Transfer of funds to general fund. (1) By August 15, 2011, the state treasurer shall transfer \$1.85 million from the telecommunications services and specialized telecommunications equipment account provided for in 53-19-310 to the general fund.

(2) The state treasurer shall transfer \$6 million from the older Montanans trust fund, provided for in 52-3-115, to the general fund for the biennium beginning July 1, 2011.

(3) By August 15, 2011, the state treasurer shall transfer \$3 million from the fire suppression account provided for in 76-13-150 to the general fund.

Section 3. Transfer of funds to health and medicaid initiative account. For the biennium beginning July 1, 2011, the state treasurer shall transfer \$3,166,502 from the older Montanans trust fund provided for in 52-3-115 to the health and medicaid initiatives account provided for in 53-6-1201.

Section 4. Section 15-35-108, MCA, is amended to read:

“15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of [5.8% through September 30, 2013, and beginning October 1, 2013, the amount of] 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$1.275 million to the research and commercialization state special revenue account created in 90-3-1002, *of which \$375,000 per year is appropriated for fiscal years 2012 and 2013 to the department of commerce for the small business state matching grant program authorized in 90-1-117 to provide matching grants for small business innovation research and small business technology transfer, \$125,000 per year is appropriated for fiscal years 2012 and 2013 to the high-performance supercomputing program in the department of commerce, and \$300,000 per year is appropriated for fiscal years 2012 and 2013 to the board of regents for the development of energy and natural resources doctoral programs at Montana tech of the university of Montana;*

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (Terminates June 30, 2013—sec. 5, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2013) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The

trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of [5.8% through September 30, 2013, and beginning October 1, 2013, the amount of] 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

- (i) \$65,000 to the cooperative development center;
- (ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;
- (iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;
- (iv) to the department of commerce:
 - (A) \$125,000 for a small business development center;
 - (B) \$50,000 for a small business innovative research program;
 - (C) \$425,000 for certified regional development corporations;
 - (D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and
 - (E) \$300,000 for export trade enhancement. (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2019) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.”

Section 5. 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) 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 from the account 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 to the old fund account provided for in [section 14] if the amount in [section 13 or 14] is insufficient.~~

~~(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 6. Section 52-3-115, MCA, is amended to read:

"52-3-115. (Temporary) Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

(2) (a) The money in the fund may be used to create new, innovative services or to expand existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level of appropriations for those services.

(b) As used in subsection (2)(a), the phrase "trended traditional level of appropriations" 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.

(3) The department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund except as provided in this section. Until the year 2015, if assets

in the fund reach the following amounts, money may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

(a) When the fund balance reaches \$20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches \$50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches \$100 million, 80% of the interest earned may be appropriated.

(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).

(6) The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210. (Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

52-3-115. (Effective July 1, 2011) Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

(2) The money in the fund may be used to ~~create~~ *fund* new, innovative services or ~~to expand~~ existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. ~~The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level, as used in 53-6-1201, of appropriations for those services.~~

(3) The department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund except as provided in this section. ~~Until the year 2015, if assets in the fund reach the following amounts, money~~ *Money* may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

~~(a) When the fund balance reaches \$20 million, 50% of the interest earned may be appropriated.~~

~~(b) When the fund balance reaches \$50 million, 60% of the interest earned may be appropriated.~~

~~(c) When the fund balance reaches \$100 million, 80% of the interest earned may be appropriated.~~

~~(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).~~

~~(6)(5) The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210."~~

Section 7. Section 53-19-310, MCA, is amended to read:

"53-19-310. Account for telecommunications services and specialized telecommunications equipment for persons with disabilities. (1) There is an account for telecommunications services and

specialized telecommunications equipment for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all fees billed and collected pursuant to 53-19-311.

(2) *The Subject to legislative fund transfers*, money in the account is allocated to the committee for purposes of implementing this part. *Gifts and grants received by the committee as provided in 53-19-309 are not subject to legislative fund transfers.*

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account.”

Section 8. Section 75-10-532, MCA, is amended to read:

“75-10-532. Disposition of money collected. All money received from the sale of junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees must be remitted to the state, as provided in 15-1-504. *The Subject to legislative fund transfers*, the money must be used for the control, collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles.”

Section 9. Section 75-10-743, MCA, is amended to read:

“75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), ~~and~~ (10), *and* (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(c) unencumbered funds remaining in the abandoned mines state special revenue account;

(d) interest income on the account;

(e) funds received from settlements pursuant to 75-10-719(7); and

(f) funds received from reimbursement of the department’s orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final

remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(11) The orphan share account is subject to legislative fund transfers."

Section 10. Section 76-13-150, MCA, is amended to read:

"76-13-150. Fire suppression account — fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account, *and the money in the account is subject to legislative fund transfers.*

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for the purpose of paying expenses for fire prevention, including fuel mitigation, grants for the purchase of fire suppression equipment for county cooperatives, and fire suppression costs.

(5) Interest earned on the balance of the account is retained in the account."

Section 11. Section 76-15-904, MCA, is amended to read:

"76-15-904. Coal bed methane protection account — use. (1) There is a coal bed methane protection account in the state special revenue fund.

(2) There must be deposited in the account the proceeds from the distribution of oil and natural gas production taxes, as provided in 15-36-331.

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) Subject to the conditions of ~~subsection~~ *subsections (5) and (6)*, money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(6) ~~Money Subject to legislative fund transfers, money~~ in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905. (Subsection (2) terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)”

Section 12. Section 82-11-135, MCA, is amended to read:

“82-11-135. Money earmarked for board expenses. The state treasurer shall deposit all money distributed to the board under 15-36-331 and collected under this chapter in the state special revenue fund. ~~The Subject to legislative fund transfers, the~~ money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board’s money in the state special revenue fund must be credited to the board.”

Section 13. Old fund liability account. (1) ~~There is an old fund liability account in the state special revenue fund established by 17-2-102 to be administered by the department of administration.~~

(2) ~~Until July 1, 2013, the state fund shall deposit in the account described in subsection (1) the fees collected as provided in [section 14].~~

(3) ~~Interest and income earned on money in the account must be retained within the account except as provided in this section.~~

(4) ~~Beginning July 1, 2012, the state treasurer shall transfer funds in the old fund liability account on an as-needed basis into the old fund account provided for in [section 14] to pay claims for injuries occurring before July 1, 1990.~~

Section 14. Old fund premium fee — assessment. (1) ~~Until July 1, 2013, the state fund shall pay into the old fund liability account, provided for in [section 13], a fee assessed upon net premiums. Beginning July 1, 2013, the state fund shall deposit the fees assessed upon net premiums into the old fund account.~~

(2) ~~A fee must be assessed on net premiums at a rate of 2.75% and must be included in rates established in 39-71-2330.~~

(3) (a) ~~For the purposes of this section, the term “net premium” has the meaning provided by the national association of insurance commissioners.~~

(b) ~~For the purposes of this part, the term “old fund account” means the account in the proprietary fund type to pay claims for injuries resulting from accidents that occurred before July 1, 1990.~~

Section 15. Appropriation. (1) ~~There is appropriated up to \$2 million in fiscal year 2011 from the general fund to the department of administration on a one-time-only basis for transfer to the old fund account provided for in [section 14].~~

~~(2) There is appropriated \$11 million on a one-time-only basis for the fiscal year ending June 30, 2012, to the department of administration for transfer to the old fund account for unfunded liabilities, if necessary. These funds may be used only for the purposes of this subsection, except as provided in subsection (3).~~

~~(3) If the funds appropriated in subsection (2) are not needed for the purpose specified in subsection (2), the department of administration may transfer up to \$2.2 million of the remainder to compensate state agencies for any difference in the amount appropriated from the general fund for workers' compensation premiums and the actual amount of workers' compensation premiums funded from the general fund. The methodology for determining general fund appropriations for workers' compensation and actual general fund workers' compensation premium costs must be based on an agreement between the director of the office of budget and program planning and the legislative fiscal analyst.~~

~~(4) (a) The approving authority, as defined in 17-7-102, shall review and may approve the transfer under subsection (3).~~

~~(b) The legislative finance committee shall review the proposed transfer prior to the distribution of funds under subsection (3).~~

~~**Section 16. Codification instruction.** [Sections 13 and 14] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 13 and 14].~~

~~**Section 17. Coordination instruction.** (1) If House Bill No. 42 is passed and approved in a form that contains a fund transfer from the coal bed methane protection account provided for in 76-15-904 to the state treasury, then the fund transfer in [section 1(3)] is reduced by the amount specified in House Bill No. 42. For the purpose of this section, the fund transfer in [section 1(3)] may not be decreased below \$0.~~

~~(2) If Senate Bill No. 424 and [this act] are both passed and approved, then Senate Bill No. 424 is void.~~

~~(3) If House Bill No. 611 is not passed and approved, then [section 4 of this act], amending 15-35-108, is void.~~

~~**Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.~~

~~**Section 19. Effective dates — applicability.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.~~

~~(2) [Section 14(2)] is effective July 1, 2011, and applies to new or renewal policies effective July 1, 2011.~~

~~**Section 20. Termination.** (1) [Sections 2, 6, and 7] terminate June 30, 2013.~~

~~(2) [Section 14] terminates June 30, 2023.~~

Approved May 4, 2011

~~**Note:** The striking of language in the title and the striking of sections 5, 13 through 16, 19(2), and 20(2) was done by Governor's line item veto dated May 4, 2011.~~

CHAPTER NO. 313

[HB 15]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO PUBLIC SCHOOL FACILITY PROJECTS THROUGH THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; AUTHORIZING GRANTS FROM THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PLANNING GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations from school facility and technology account — grants for school facility projects. (1) There is appropriated \$11,069,265 to the department of commerce for the biennium beginning July 1, 2011, from the school facility and technology account provided for in 20-9-516 in the state special revenue fund to be used to finance grants authorized by this section.

(2) The funds appropriated in subsection (1) must be used by the department to make grants to the public school districts listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in 90-6-812 and described in the quality schools facility grant program 2013 biennium report to the 62nd legislature. The legislature, pursuant to 90-6-809 and 90-6-810, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in subsection (5) until the funds appropriated in subsection (1) are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

Applicant/Project	Grant Amount
1. Big Sandy/Lighting and Sensors	\$124,340
2. Sweet Grass Co. HS/HVAC Remodel	\$207,500
3. Somers/Roof Replacement	\$418,142
4. Box Elder/Elementary School Addition	\$799,590
5. Winnett/Finish Shop Building and Purchase Equipment	\$314,107
6. White Sulphur Springs/Geothermal Heating System	\$350,000
7. Helena ELE/ADA Improvement	\$1,429,796
8. Gardiner/Energy Efficiency Upgrades	\$43,694
9. Centerville/Boiler Replacement	\$148,534
10. Shelby ELE/Wall Repairs	\$146,904
11. Fair-Mont-Egan/Classroom Addition	\$379,110
12. Livingston/Roof Replacement	\$709,336
13. Corvallis/New Vocational Facility	\$901,318
14. North Star/Fire Alarm System	\$123,386
15. Choteau/Food Service Facility Repairs	\$344,400
16. Miles City/Upgrade Temperature Controls	\$442,841

17. Shelby HS/Lighting Retrofit	\$102,895
18. Rocky Boy/Replace Emergency Generator	\$72,650
19. Whitefish/HS Campus Redevelopment (Phase I)	\$658,019
20. Colstrip/Upgrade Temperature Controls	\$329,153
21. Whitehall/Roof Replacement	\$534,232
22. Stanford/Boiler Replacement	\$220,500
23. Grass Range/Door and Breezeway Upgrades	\$38,315
24. Superior/Classroom Expansion	\$521,162
25. Geraldine/Energy Efficiency Upgrades	\$106,900
26. Bozeman HS/Lighting Retrofit	\$109,087
27. Frazer/Boiler Replacement	\$243,086
28. Libby/Boiler Replacement	\$391,470
29. Hamilton/Boiler & Heat System Replacement	\$751,000
30. Bozeman ELE/Lighting Retrofit	\$107,798

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the school facility and technology account state special revenue funds during the 2013 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in 90-6-812 and on the availability of funds.

(5) Funding for projects in subsection (3) must be provided only so long as there are sufficient funds available from the school facility and technology account in the state special revenue fund. Funding for these projects must be made available in the order that the grant recipients satisfy the conditions described in 90-6-812. Once all funds appropriated in subsection (1) for the biennium are totally committed to projects that have satisfied the conditions described in 90-6-812, the obligation to any remaining projects ceases.

(6) Grant recipients must complete the projects described in subsection (3) by June 30, 2013, or the grant contract must be terminated.

Section 2. Appropriations from school facility and technology account — emergency grants. There is appropriated \$100,000 to the department of commerce for the biennium beginning July 1, 2011, from the school facility and technology account in the state special revenue fund for the purpose of providing emergency grants to public school districts for a school facility project that is necessitated by an emergency, as defined in 90-6-803.

Section 3. Appropriations from school facility and technology account — planning grants. There is appropriated \$900,000 to the department of commerce for the biennium beginning July 1, 2011, from the school facility and technology account in the state special revenue fund for the purpose of providing matching planning grants to public school districts for the planning of school facility projects, as defined in 90-6-803.

Section 4. Approval of grants — completion of biennial appropriation. (1) The legislature, pursuant to 90-6-809 and 90-6-810, authorizes grants for the projects identified in [sections 1 through 3].

(2) The authorization of these grants completes a biennial appropriation from the school facility and technology state special revenue account provided for in 20-9-516(1).

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved May 5, 2011

CHAPTER NO. 314

[HB 29]

AN ACT INCLUDING MILITARY SERVICE OVERSEAS AS AN EXTRAORDINARY EVENT TO BE CONSIDERED FOR UNDERWRITING OR RATING EXCEPTIONS IN REGARD TO CREDIT REPORTS; AMENDING SECTION 33-18-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-18-605, MCA, is amended to read:

“33-18-605. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

(a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);

(c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

(d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

(e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;

(ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

(g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the

insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):

(i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (1)(g); if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

(A) the insurer is treating the consumer as otherwise approved by the commissioner;

(B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;

(C) credit was not used for underwriting or rating the insured when the policy was initially written;

(D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information.

(h) use a credit score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

(ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

(v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

(ii) temporary loss of employment;

(iii) death of an immediate family member; ~~or~~

(iv) theft of identity pursuant to 45-6-332; *or*

(v) *military service overseas.*"

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

Approved May 5, 2011

CHAPTER NO. 315

[HB 43]

AN ACT CLARIFYING EMPLOYER RIGHTS RELATED TO WORKERS' COMPENSATION, DRUG TESTING, AND DISCIPLINARY ACTION INVOLVING AN EMPLOYEE'S MEDICAL USE OF MARIJUANA; EXPANDING THE TYPES OF EMPLOYEES COVERED BY THE WORKFORCE DRUG AND ALCOHOL TESTING ACT; CREATING EMPLOYMENT-RELATED EXCEPTIONS TO THE PROTECTIONS OF THE MEDICAL MARIJUANA ACT; PROVIDING DEFINITIONS; AMENDING SECTIONS 39-2-206, 39-2-210, 39-2-313, 39-71-407, 50-46-201, AND 50-46-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, employers who are concerned about public and workplace safety have increasingly faced issues associated with employees and potential employees who are approved for or associated with the medical use of marijuana; and

WHEREAS, clarifications are necessary to affirm employers' rights in the hiring and termination process, drug testing, and other issues related to the medical use of marijuana in an employee's course and scope of employment.

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

Section 1. Section 39-2-206, MCA, is amended to read:

"39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) (a) "Employee" means an individual engaged in the performance, supervision, or management of work in a:

(i) hazardous work environment;

(ii) security position; or

(iii) position:

(A) affecting public safety; or public health;

(B) in which driving a motor vehicle is necessary for any part of the individual's work duties; or

or

(C) involving a fiduciary position responsibility for an employer.

(b) ~~The term~~ ~~and~~ ~~The term~~ does not include an independent contractor. ~~The term~~ ~~includes~~ or an elected official who serves on the governing body of a local government.

(5) (a) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(b) *The term includes the governing body of a local government.*

(6) "Governing body" means the legislative authority of a local government.

~~(6)~~(7) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(8) "Local government" means a city, town, county, or consolidated city-county.

~~(7)~~(9) "Medical review officer" means a licensed physician trained in the field of substance abuse.

~~(8)~~(10) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

~~(9)~~(11) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

~~(10)~~(12) "Sample" means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol."

Section 2. Section 39-2-210, MCA, is amended to read:

“39-2-210. Limitation on adverse action. *No Except as provided in 50-46-205, no* adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee’s record and destroyed.”

Section 3. Section 39-2-313, MCA, is amended to read:

“39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions. (1) For purposes of this section, “lawful product” means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer’s premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product, *including the medical use of marijuana as defined in 50-46-102*, that:

(i) affects in any manner an individual’s ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual’s employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer’s actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees’ use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer’s insurance carriers; and

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.”

Section 4. Section 39-71-407, MCA, is amended to read:

“39-71-407. Liability of insurers — limitations. (1) For workers’ compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan

No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

~~(4) An~~ *Except as provided in subsection (5), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.*

(5) (a) An employee who has received written certification, as defined in 50-46-102, from a physician for the medical use of marijuana and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (5)(b) through (5)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's medical use of marijuana, as defined in 50-46-102, is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the medical use of marijuana, as defined in 50-46-102.

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's medical use of marijuana, as defined in 50-46-102. An insurer remains liable for those benefits that the worker would qualify for absent the worker's medical use of marijuana.

(6) The provisions of subsection (4) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (6) does not apply to medical marijuana, which is not a prescribed drug.

~~(5)~~(7) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently

filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

(6)(8) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(7)(9) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(8)(10) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 with an occupational disease that arises out of or is contracted in the course and scope of employment.

(9)(11) Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:

(a) the occupational disease is established by objective medical findings; and

(b) the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

(10)(12) When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(11)(13) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

(12)(14) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

(13)(15) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 5. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) *Except as provided in 50-46-205*, a person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be

denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 6. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana;

(b) the use of marijuana by a caregiver; or

(c) the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

(a) a government medical assistance program ~~or, a private health insurer group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116~~ to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate ~~the medical use of marijuana in any workplace~~ *the medical use of marijuana.*

(3) *Nothing in this chapter may be construed to:*

(a) *prohibit an employer from including in any contract a provision prohibiting the medical use of marijuana; or*

(b) *permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.*

~~(3)~~(4) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

Section 7. Coordination instructions. (1) If both House Bill No. 161 and [this act] are passed and approved, then [sections 2 through 6 of this act] are void.

(2) If House Bill No. 175 is approved by the electorate in 2012, then [sections 2 through 6 of this act] are void on [the effective date of House Bill No. 175].

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

Approved May 6, 2011

CHAPTER NO. 316

[HB 47]

AN ACT AUTHORIZING FISHING WITHOUT A LICENSE ON A SPECIFIC WEEKEND EACH YEAR; AMENDING SECTION 87-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-103, MCA, is amended to read:

"87-2-103. License required — exceptions. (1) Except as provided in ~~subsection~~ *subsections (2) and (3)*, it is unlawful for a person to:

(a) hunt or trap or attempt to hunt or trap any game animal, any game bird, or any fur-bearing animal or to fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds, except as provided by law or as provided by the department; or

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or to fish for any fish, except at the places and during the periods and in the manner defined by law or as defined by the department; or

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of

fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so; or

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) *Each year on Father's Day weekend, a person may fish for any fish within this state without obtaining a fishing license required in subsection (1)(c) as long as the person does so in accordance with any other law or regulation of the department in effect on that weekend.*

Section 2. Coordination instruction. If both Senate Bill No. 124 and [this act] are passed and approved, then [sections 1 and 4 of this act] are void and [this act] must read as follows:

NEW SECTION. Section 1. Free fishing weekend. Each year on Father's Day weekend, a person may fish for any fish within this state without obtaining a fishing license pursuant to this part as long as the person does so in accordance with any other law or regulation of the department in effect on that weekend.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87, chapter 2, part 3, apply to [section 1].

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

Section 3. Coordination instruction. If both Senate Bill No. 124 and [this act] are passed and approved, then [section 22] of Senate Bill No. 124 must read as follows:

NEW SECTION. Section 22. Hunting, fishing, or trapping without a license. (1) Except as provided in [section 1 of House Bill No. 47] and subsection (2) of this section, a person may not:

(a) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds except as provided by law or as provided by the department;

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish, except at the places and during the periods and in the manner established by law or as prescribed by the department;

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so;

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident; or

(e) hunt migratory game birds without first having obtained a valid migratory game bird license from the department if the person is 16 years of age or older.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted of hunting without a license may be subject to the additional penalties provided in [sections 63 and 64].

(5) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].”

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2011

CHAPTER NO. 317

[HB 90]

AN ACT GENERALLY REVISING MONTANA MORTGAGE LAWS; CHANGING THE NAME OF THE MONTANA MORTGAGE BROKER, MORTGAGE LENDER, AND MORTGAGE LOAN ORIGINATOR LICENSING ACT TO THE MONTANA MORTGAGE ACT; REVISING DEFINITIONS; DEFINING AND PROVIDING FOR THE LICENSING AND REGULATION OF MORTGAGE SERVICERS; REVISING THE MONTANA MORTGAGE ACT TO CONFORM TO FEDERAL LAW; REVISING APPLICATION AND LICENSING REQUIREMENTS; REDUCING THE REQUIRED HOURS FOR CONTINUING EDUCATION; REVISING RECORDKEEPING AND REPORTING REQUIREMENTS; REVISING BONDING REQUIREMENTS; REVISING DISCLOSURE REQUIREMENTS; PROHIBITING CERTAIN ACTS BY MORTGAGE LENDERS AND MORTGAGE SERVICERS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-202, 32-5-102, 32-7-103, 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-106, 32-9-107, 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-128, 32-9-129, 32-9-130, 32-9-133, 32-9-145, 32-9-148, 32-9-150, 32-9-151, AND 32-9-160, MCA; AND REPEALING SECTIONS 32-9-114 AND 32-9-127, MCA.

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

Section 1. Section 31-1-202, MCA, is amended to read:

“31-1-202. Definitions — scope. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

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

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money, or things in action, or *dwelling as defined in 15 U.S.C. 1602(v)*. ~~The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.~~

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(iii) *The term does not include a dwelling as defined in 15 U.S.C. 1602(v).*

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed

the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

(c) *This part does not apply to a transaction governed by Title 32, chapter 9, part 1.*"

Section 2. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

(2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

(ii) title loans provided for in Title 31, chapter 1, part 8; or

(iii) residential mortgage loans as defined in 32-9-103.

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

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

(5) "License" means a license provided for by this chapter.

(6) "Licensee" means the person holding a license.

(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."

Section 3. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state

relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or mortgage servicer;

(d)(e) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the director upon the director's request.

(e)(f) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if the broker is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

(f)(g) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

Section 4. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "~~Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act~~".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, *mortgage servicers*, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 5. Section 32-9-102, MCA, is amended to read:

"32-9-102. License requirement — registration. (1) Unless exempt under 32-9-104, a person may not act as a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator with respect to any residential ~~real estate mortgage loan~~ located in Montana unless licensed under the provisions of this part.

(2) ~~Any~~ A person acting as a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator under this part is required to be licensed ~~and through~~, registered with, and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry ~~by the date set forth in 32-9-105(4)~~. (See compiler's comment regarding contingent suspension.)"

Section 6. Section 32-9-103, MCA, is amended to read:

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

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain

information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(4) "Bona fide third party" means a person that provides services relative to *the origination of a residential mortgage loan transactions*. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan *or an obligor on a residential mortgage loan*.

(6) "Branch office" means a location *at which a licensee conducts business* other than a licensee's principal place of business. *The location is considered a branch office if:*

(a) *the address of the location appears on business cards, stationery, or advertising used by the entity;*

(b) *the entity's name or advertising suggests that mortgages are made at the location;*

(c) *the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or*

(d) *the location is controlled directly or indirectly by the entity.*

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

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

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

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

(11) "*Dwelling*" has the meaning provided in 15 U.S.C. 1602(v).

~~(11)~~(12) "Entity" means a business organization, including a sole proprietorship.

~~(12)~~(13) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender *or*

mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(13)~~(14) “Escrow funds” means funds entrusted to a mortgage lender or *mortgage servicer* by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

~~(14)~~(15) “Federal banking agency” means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

~~(15)~~(16) “Immediate family member” means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

~~(16)~~(17) “Individual” means a natural person.

~~(17)~~(18) “Licensee” means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(18)~~(19) “Loan commitment” means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

~~(19)~~(20) “Loan processor or underwriter” means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

~~(20)~~(21) “Mortgage” means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(21)~~(22) (a) “Mortgage broker” means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection ~~(21)~~ (22), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(22)~~(23) “Mortgage lender” means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

~~(23)~~(24) (a) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

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

(b) The term does not include an individual:

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

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

~~(24) “Mortgage servicer loss mitigation specialist” means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower’s obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.~~

~~(25) “Mortgage servicer” means an entity that:~~

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

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

~~(25)(26) “Nationwide mortgage licensing system and registry” means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators.~~

~~(26)(27) “Nontraditional mortgage product” means any mortgage product other than a 30-year, fixed-rate mortgage.~~

~~(27)(28) “Person” means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.~~

~~(28)(29) “Real estate brokerage activities” means activities that involve offering or providing real estate brokerage services to the public, including:~~

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

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

~~(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;~~

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

~~(e) offering to engage in any activity or act in any capacity described in subsections ~~(28)(a)~~ (29)(a) through ~~(28)(d)~~ (29)(d).~~

~~(29)(30) “Registered mortgage loan originator” means an individual who:~~

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

~~(i) a depository institution;~~

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

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

~~(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.~~

~~(30)(31) “Residential mortgage loan” means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section~~

103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v), or on residential real estate located in Montana.

~~(31)~~(32) “Residential real estate” means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower’s intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(32)~~(33) “Trust account” means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(34) *“Trust account funds” means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.*

~~(33)~~(35) “Ultimate equity owner” means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(34)~~(36) “Unique identifier” means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler’s comment regarding contingent suspension.)”

Section 7. Section 32-9-104, MCA, is amended to read:

“32-9-104. Exemptions — proof of exemption. (1) The provisions of this part do not apply to:

- (a) an entity that is an agency of the federal, state, or municipal government;
- (b) an entity described in 32-9-103~~(29)(a)(i)~~(30)(a)(i) through ~~(29)(a)(iii)~~(30)(a)(iii);
- (c) a registered mortgage loan originator when acting for an entity described in 32-9-103~~(29)(a)(i)~~(30)(a)(i) through ~~(29)(a)(iii)~~(30)(a)(iii);
- (d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;
- (e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;
- (f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee’s housing needs;
- (g) an entity engaged solely in commercial real estate lending;
- (h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan’s participants;

(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;

(k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;

(l) a licensed *Montana-licensed* attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(m) a licensed *Montana-licensed* certified public accountant or a licensed *Montana-licensed* public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

~~(2) The department or the secretary of housing and urban development may exempt from this part mortgage servicer loss mitigation specialists if the department or the secretary of housing and urban development determines by guideline, interpretation, or rule that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.~~

~~(3)(2) The burden of proving an exemption under this section is on the person claiming the exemption. A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption.~~

~~(3) A person who is exempt from licensure under subsection (1) may register on the nationwide mortgage licensing system as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"~~

Section 8. Types of licenses. (1) The four types of licenses under this part are mortgage broker licenses, mortgage lender licenses, mortgage servicer licenses, and mortgage loan originator licenses.

(2) A mortgage broker license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

(3) A licensee-owned mortgage broker entity license may be issued to an entity that meets the requirements of subsection (2) and is owned by a Montana-licensed mortgage loan originator.

(4) A mortgage lender license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

(5) A mortgage servicer license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-117, and 32-9-123.

(6) A mortgage loan originator license may be issued to an individual who meets the requirements of 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, and 32-9-117 and is sponsored by a Montana-licensed mortgage broker or mortgage lender.

(7) A Montana-licensed entity may have one or more branch offices if the entity meets the requirements of 32-9-122 and has paid the fee required under 32-9-117.

(8) Licenses under this part may not be assigned or transferred.

Section 9. Section 32-9-105, MCA, is amended to read:

~~“32-9-105. Overall licensing requirements Nationwide mortgage licensing system and registry for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators.~~ (1) ~~The department is authorized to~~ *may* participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders, mortgage brokers, *mortgage servicers*, and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry ~~by the dates set forth in subsection (4).~~

(2) The department may establish requirements *through rulemaking* as necessary to comply with the nationwide mortgage licensing system and registry, including *requirements*:

(a) *for* payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry;

(b) *for* renewal or reporting dates;

(c) *for* procedures ~~for amending to amend or surrendering to surrender~~ a license; and

(d) ~~requirements~~ pertaining to any other activity necessary for participation in the nationwide mortgage licensing system and registry.

(3) The state portion of the licensing fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.

~~(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:~~

~~(a) April 1, 2010, for all new applicants applying after July 1, 2009;~~

~~(b) June 30, 2010, for all licensees with current licenses as of July 1, 2009; and~~

~~(c) for mortgage servicer loss mitigation specialists, if not exempt under 32-9-104(2), a date as set by the department by rule.~~

~~(5) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters.~~

(4) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters. (See compiler's comment regarding contingent suspension.)

Section 10. Section 32-9-106, MCA, is amended to read:

“32-9-106. Dual Simultaneous licensure. An entity may be simultaneously licensed as a mortgage lender, *mortgage servicer*, and a mortgage broker ~~provided that if~~ the entity meets all requirements for licensure ~~for each license type as a mortgage lender and a mortgage broker.~~ (See compiler’s comment regarding contingent suspension.)”

Section 11. Section 32-9-107, MCA, is amended to read:

“32-9-107. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator’s license shall complete at least 20 hours of approved education courses, which must include *at least*:

- (a) ~~at least~~ 3 hours of training on federal law and regulations;
- (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana.

~~(3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator. (See compiler’s comment regarding contingent suspension.)”~~

Section 12. Section 32-9-112, MCA, is amended to read:

“32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license — renewals. (1) An applicant under this part shall apply for a state license ~~in~~ *or renewal of a license on* a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.

(2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant *for a license or license renewal* shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant’s identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check;

~~(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and~~

(e)(b) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the department to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

(6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under 32-9-120. (See compiler's comment regarding contingent suspension.)"

Section 13. Section 32-9-113, MCA, is amended to read:

"32-9-113. Application for licensure license — renewal. In order for an entity to be considered for a state licensure license or license renewal, each of the following is required to independently meet the requirements established in 32-9-120(1)(a) through ~~(1)(d)~~ (1)(c) and (1)(g):

(1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;

(2) control persons of the applicant if the control persons are individuals; and

(3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity. (See compiler's comment regarding contingent suspension.)"

Section 14. Section 32-9-116, MCA, is amended to read:

"32-9-116. Employment of mortgage loan originator. (1) A mortgage loan originator may transact business ~~only for an~~ *only one* employing mortgage broker or one employing mortgage lender licensed in accordance with the provisions of this part. ~~Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker or employing mortgage lender at the employing licensee's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.~~

(2) If the employment of a mortgage loan originator is terminated, the mortgage broker or the mortgage lender shall ~~return the mortgage loan originator's license to the department within 5 business days after the termination and~~ remove sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of the termination. *The mortgage loan originator's license must be placed in "Approved-Inactive" status until the license is sponsored by a mortgage broker or mortgage lender. If at the end of the next renewal period the license is not*

sponsored by a mortgage broker or mortgage lender, it must be automatically placed in "Terminated-Expired" status for failure to renew. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by complying with the nationwide mortgage licensing system and registry procedures and paying a fee established by the department by rule. The removal of sponsorship of the license of any mortgage loan originator that is not transferred to another mortgage broker or mortgage lender terminates extinguishes the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until nationwide mortgage licensing system and registry procedures have been followed to sponsor the license. The license of any mortgage loan originator that has been removed from sponsorship and not transferred within 6 months of termination of employment must be canceled. (See compiler's comment regarding contingent suspension.)"

Section 15. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees — license renewal — disposition of fees. (1) (a) ~~Except as provided in subsection (1)(b), an~~ An entity seeking licensure as a mortgage broker shall pay *through the nationwide mortgage licensing system and registry* an initial nonrefundable license application fee of \$500 and an additional application fee of \$250 for any branch ~~location~~ office. A mortgage loan originator shall pay *through the nationwide mortgage licensing system and registry* an initial nonrefundable license application fee of \$400. An entity seeking licensure as a mortgage lender shall pay *through the nationwide mortgage licensing system and registry* an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch ~~location~~ office. ~~An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months. An entity seeking licensure as a mortgage servicer shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$750 and an additional nonrefundable application fee of \$250 for each branch office.~~

(b) ~~An individual who is seeking licensure as a mortgage loan originator and who is the owner of an entity that is seeking licensure as a mortgage broker A mortgage broker entity owned by a Montana-licensed mortgage loan originator shall pay a single initial nonrefundable through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$500~~ \$100.

(2) The license of a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator is valid for *up to a 1-year period and expires on December 31*. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. ~~The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b). An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit~~ *If the* required information or fees *are not submitted* within the time prescribed, ~~means~~ the license *will automatically expires* be placed in "Terminated-Expired" status. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.

(3) An application for renewal of a *mortgage loan originator license* must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.

(4) The state portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

(5) An applicant for a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 16. Section 32-9-118, MCA, is amended to read:

"32-9-118. Continuing education requirements for mortgage loan originators. (1) All mortgage loan originators shall complete and submit to the nationwide mortgage licensing system and registry evidence of at least ~~12~~ 8 hours of continuing education every year at the time they submit their license renewal applications. The ~~12~~ 8 hours of continuing education must be obtained in ~~an~~ approved education ~~course~~ courses.

(2) The ~~12~~ 8 hours of education must include at least:

(a) 3 hours of training on federal laws and regulations;

(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of ~~subsection~~ subsections (1) and (2) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.

(4) *Except as provided in subsection (6), a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.*

(5) *A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.*

~~(4)~~(6) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license. *The continuing education requirements of this subsection are not subject to the provisions of subsection (4). (See compiler's comment regarding contingent suspension.)*"

Section 17. Section 32-9-120, MCA, is amended to read:

"32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker,

mortgage lender, *mortgage servicer*, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator license or ~~their~~ *an* equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (1)(b).

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not ~~met~~ *provided* the surety bond ~~or net worth requirement~~ as required pursuant to 32-9-123;

(e) the applicant has not completed the preclicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c). (See compiler's comment regarding contingent suspension.)"

Section 18. Section 32-9-121, MCA, is amended to read:

"32-9-121. Records maintenance — advertising requirement. (1) Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account or escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.

(2) A mortgage broker, ~~or~~ mortgage lender, *or mortgage servicer* shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker, ~~or~~ mortgage lender, *or mortgage servicer* shall maintain trust account or escrow account records for a minimum of 5 years.

(3) *An entity that ceases operation as a licensee under the provisions of this part shall:*

(a) *30 days prior to the discontinuance of business, notify the department of the physical location where required records will be preserved; and*

(b) *designate a custodian of records and notify the department of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve records required under this part and allow the department access for examination and investigation purposes upon request of the department.*

(4) *The department shall adopt rules to control the maintenance, storage, transfer, and destruction of records after a licensee ceases operation.*

(5) (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name and ~~license number~~ *unique identifier* for each mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator advertising as an individual; or

(ii) the name and ~~license number~~ *unique identifier* only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, *mortgage servicers*, or mortgage loan originators also listed.

(b) For the purposes of this subsection (5), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, a mortgage lender's, a *mortgage servicer's*, or a mortgage loan originator's ~~license number~~ *unique identifier* but is not required to list the entity's ~~license number~~ *unique identifier* if the entity's name is listed. (See compiler's comment regarding contingent suspension.)"

Section 19. Section 32-9-122, MCA, is amended to read:

"32-9-122. Designated manager and branch office license requirements. (1) A mortgage broker, or mortgage lender, or *mortgage servicer* entity shall apply for a license for a main office and for every branch office through the nationwide mortgage licensing system and registry and maintain a unique identifier.

(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch ~~location~~ *office*.

(3) A mortgage lender entity shall designate to the nationwide mortgage licensing system and registry for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch ~~location~~ *office that originates a residential mortgage loan*.

(4) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage

broker or mortgage lender entity, including for violations of federal laws *and regulations* that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for conduct that violates federal laws *and regulations* that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage loan originator *lender* shall designate another individual licensed as a mortgage ~~broker~~ *loan originator* as designated manager and shall submit information to the nationwide mortgage licensing system and registry establishing that the subsequent designated manager is in compliance with the provisions of this part.

(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall ~~return the designated manager's license to the department within 5 business days of the termination and~~ remove the sponsorship of the designated manager on the nationwide mortgage licensing system and registry within 5 business days of the termination.

(10) *A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See compiler's comment regarding contingent suspension.)*"

Section 20. Section 32-9-123, MCA, is amended to read:

"32-9-123. Surety bond ~~or net worth~~ requirement — notice of legal action. (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of ~~or exclusive agent for~~ a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) *The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part.* The department shall use the proceeds of the surety bonds to reimburse borrowers, *the department*, or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, or mortgage loan originator that violates ~~the provisions~~ *any provision* of this part.

(2) (a) *A An entity licensed as a mortgage broker, or mortgage lender, and mortgage servicer* is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;

(ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or

(iii) \$100,000 for annual loan production of more than \$100 million a year.

(c) *The amount of the required surety bond for a mortgage servicer is \$100,000.*

~~(3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement.~~

~~(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.~~

~~(c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.~~

~~(4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the department of housing and urban development's approval is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in subsections (2)(b)(i) through (2)(b)(iii).~~

~~(5)(3) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's broker, mortgage lender's lender, mortgage servicer, or mortgage loan originator's originator obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, a mortgage lender, a mortgage servicer, a mortgage loan originator, or anyone having an ownership interest in a mortgage broker entity, or mortgage lender entity, or a mortgage loan originator mortgage servicer entity. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.~~

~~(4) (a) An obligor shall give written notice to the department of any action that may be brought against it by any creditor or borrower when the action:~~

~~(i) is brought under this part;~~

~~(ii) involves a claim against the bond filed with the department for the purposes of compliance with this section; or~~

~~(iii) involves a claim for damages in excess of \$20,000 for a mortgage broker or mortgage loan originator or \$200,000 for a lender or servicer.~~

~~(b) An obligor shall give written notice to the department of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.~~

~~(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.~~

~~(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly~~

executed by the corporate surety reinstating the bond to the required principal sum.

(6) A bond filed with the department for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department. The cancellation may not take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See compiler's comment regarding contingent suspension.)"

Section 21. Reports. (1) A licensee shall file a written report with the department within 30 business days of any material change to the information provided in a licensee's application.

(2) A licensee shall file a written report with the department within 1 business day after the licensee has reason to know of the occurrence of any of the following:

(a) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. 101, et seq., for bankruptcy or reorganization;

(b) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors;

(c) the licensee's decision to cease doing business for any reason;

(d) the commencement of a proceeding to revoke or suspend the licensee's license in a state in which the licensee engages in business or is licensed;

(e) the cancellation or other impairment of the licensee's or an exempt company's bond; or

(f) a felony conviction of the licensee, employee of a licensee, or control person of a licensee.

(3) A licensee shall file a written report with the department within 15 business days after the licensee has reason to know of the occurrence of any of the following:

(a) fraud, theft, or conversion by a borrower against the licensee;

(b) fraud, theft, or conversion by a licensee; or

(c) fraud, theft, or conversion by an employee or independent contractor of a licensee;

(d) violation of a provision of 32-9-124;

(e) the discharge of any employee or termination of an independent contractor for dishonest or fraudulent acts; or

(f) any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity.

(4) (a) In the absence of malice, fraud, or bad faith, a person may not be subjected to civil liability arising from the filing of a complaint with the department or furnishing of other information required by this section or required by the department under the authority granted in this section.

(b) In the absence of malice, fraud, or bad faith, a civil cause of action of any nature may not be brought against a person for any information:

(i) relating to suspected prohibited acts and furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory or licensing authorities;

(ii) furnished to or received from other persons subject to the provisions of this part; or

(iii) furnished in complaints filed with the department.

Section 22. Change of control. (1) Without the prior approval of the department, it is unlawful for an action to be taken that results in a change of control of an entity licensed under this part. Prior to a change of control of a licensed entity, a person seeking to acquire control shall apply for an amendment to the license or a new license as required by the nationwide mortgage licensing system and pay all applicable fees.

(2) The department shall approve or disapprove the application for an amendment or new license in accordance with the provisions of this part.

Section 23. Section 32-9-124, MCA, is amended to read:

“32-9-124. Prohibitions — required disclosure. (1) A mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party ~~later than~~ *within* 30 days after recording of the loan closing documents or *within* 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;

(f) accept any fees or compensation in excess of those allowed by state or federal law;

(g) sign a borrower’s application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

(h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or

(ii) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) *fail to account for or deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan that the mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances;*

(k) *refuse to permit an investigation or examination of the mortgage lender’s, mortgage broker’s, mortgage servicer’s, or mortgage loan originator’s books and records or refuse to comply with a department subpoena or subpoena duces tecum;*

~~(l) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the department; or~~

~~(j)(m) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency.~~

~~(2) A mortgage lender may not do any of the following:~~

~~(a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;~~

~~(b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:~~

~~(i) direct deposit to a borrower's account;~~

~~(ii) wire;~~

~~(iii) bank or certified check;~~

~~(iv) attorney's check drawn on a trust account; or~~

~~(v) other form as specifically authorized by applicable law;~~

~~(c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;~~

~~(d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;~~

~~(e) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;~~

~~(f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;~~

~~(g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;~~

~~(h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or~~

~~(i) falsely advertise or misuse names in violation of 18 U.S.C. 709.~~

~~(3)(2) Prior to providing residential mortgage services to a borrower, *Within 3 business days of taking an application*, the mortgage loan originator working for a mortgage broker, in addition to other disclosures required by this part, subsection (3), and other state and federal laws, shall provide to the borrower a written disclosure containing substantially the following language, which must be signed by the borrower:~~

~~"MORTGAGE LOAN ORIGINATION DISCLOSURE~~

~~(Name of licensee) is a licensed mortgage loan originator in Montana authorized to provide mortgage loan origination services to you in connection with your real estate loan. Lenders whose loan products we distribute generally~~

provide their loan products to us at a wholesale rate. The rate you pay may be higher.

~~SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:~~

~~(1) (name of licensee) is acting as an independent contractor and not as your agent;~~

~~(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and~~

~~(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.~~

~~SECTION 2. OUR COMPENSATION.~~

~~(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.~~

~~(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.~~

~~(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.~~

~~(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.~~

~~By signing below, you acknowledge that you have received a copy of this disclosure."~~

~~(4) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other legally available information.~~

~~(5) The disclosure must include the state license number and the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator as prescribed by the department by rule. (See compiler's comment regarding contingent suspension.)"~~

Section 24. Mortgage lender prohibitions. A mortgage lender may not:

(1) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(a) direct deposit to a borrower's account;

(b) wire transfer;

(c) bank or certified check;

(d) attorney's check drawn on a trust account; or

(e) other form as specifically authorized by applicable law;

(3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(5) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;

(6) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of downpayment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(7) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(8) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or

(9) falsely advertise or misuse names in violation of 18 U.S.C. 709 or 32-1-402.

Section 25. Mortgage servicer prohibitions. A mortgage servicer may not:

(1) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and regulations adopted under that act;

(2) fail to comply with applicable state and federal laws and regulations related to mortgage servicing;

(3) fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place the insurance when the mortgage servicer knows or has reason to know that there is insurance in effect;

(4) place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance;

(5) fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage so that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred so that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(6) fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that late penalties are not assessed or other negative consequences result regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.

Section 26. Section 32-9-125, MCA, is amended to read:

“32-9-125. Trust accounts — bona fide third-party fees. (1) Every mortgage broker and mortgage lender *that accepts borrower funds for bona fide third-party fees doing business in this state* shall:

(a) maintain a trust account at a federally insured financial institution, and the trust account funds may not be commingled with any other funds of the mortgage broker or mortgage lender;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker or mortgage lender receives; and

(c) pay third-party fees to a bona fide third party from the trust account unless the borrower, the seller, or another person involved in the transaction ~~pays is contractually bound to pay~~ the bona fide third party directly.

(2) A mortgage broker or mortgage lender may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker or mortgage lender has agreed to perform for the borrower are completed. A mortgage broker or mortgage lender may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid by the borrower, the seller, or another person involved in the transaction directly to the bona fide third party providing the services or must be paid by the borrower, the seller, or another person involved in the transaction to the mortgage broker or mortgage lender for payment of services performed by the bona fide third party:

(a) credit report fees;

(b) notary fees;

(c) title search, appraisal, or survey fees;

(d) rate-lock fees not exceeding 3% of the mortgage loan amount; and

(e) fees paid directly by the borrower, the seller, or another person involved in the transaction to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

(4) The department shall by rule define the meaning of “another person involved in the transaction”. (See compiler’s comment regarding contingent suspension.)”

Section 27. Section 32-9-126, MCA, is amended to read:

“32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses. (1) The department, upon giving a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator licensee 10 days’ written notice, which includes a statement of the grounds for the proposed suspension, conditioning, or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition, or revoke a license if it finds that the licensee has violated any provision of this part.

(2) ~~All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued. The license of a licensee that refuses to make documents and records relating to the operation of the licensee available upon request by the department must be summarily suspended.~~

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended license if ~~there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license~~ *the suspended licensee has complied with all the reinstatement conditions set forth at the time the license was suspended and if the licensee is otherwise qualified to have the license reinstated.*

(5) The department may by order vacate a revocation of a license and enter an appropriate order.

(6) *The department may refuse to accept a licensee's offer to surrender a license under the following circumstances:*

(a) *a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;*

(b) *the licensee has violated or is under investigation for a suspected violation of this part or any rule adopted under this part;*

(c) *there is an enforcement action or complaint pending against the licensee;*
or

(d) *the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.*

(7) *A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.*

(8) *In the event of a revoked, suspended, or surrendered mortgage broker, mortgage lender, mortgage servicer, or loan originator license, fees may not be refunded by the department. (See compiler's comment regarding contingent suspension.)"*

Section 28. Section 32-9-128, MCA, is amended to read:

~~**"32-9-128. Registered agent for mortgage broker, mortgage lender, or mortgage loan originator licensee without physical office in state Registration and registered agent of foreign entities — service of process — venue.** (1) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license under 32-9-113 who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.~~

~~(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:~~

~~(a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and~~

~~(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court~~

~~allows.~~ (1) *A foreign mortgage broker, mortgage lender, or mortgage servicer shall register to do business in this state as a foreign corporation, limited liability company, limited liability partnership, or limited partnership with the secretary of state.*

(2) *A foreign mortgage broker, mortgage lender, or mortgage servicer shall provide the name and address of its registered agent for service of process to the department in order to be licensed in this state and shall notify the department in writing within 5 days of a change in the licensee's registered agent's name or address.*

(3) *For purposes of this part, the department is considered to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this part, postage prepaid and addressed to the last-known address of the licensee's registered agent for service of process on file with the department, the last-known address of the licensee on file with the department for an in-state licensee, or in the case of an unlicensed person, the last-known address of the person.*

~~(4)~~(4) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

~~(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person. (See compiler's comment regarding contingent suspension.)"~~

Section 29. Section 32-9-129, MCA, is amended to read:

"32-9-129. Loan processors and underwriters. (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.

(2) A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities *as a loan processor or underwriter* unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 30. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications; and

(e) establishing fees for license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an

examination or investigation when due must result in the suspension or revocation of a licensee's license.

(8) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this section ~~part~~, *including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;*

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, *without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;*

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (8)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

~~(9) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and mortgage lender and a roster of all mortgage loan originators and designated managers and the name of their employing mortgage brokers or employing mortgage lenders. The roster must be available to interested persons and to the general public.~~

~~(10)~~(9) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the nationwide mortgage licensing system and registry;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and

(d) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry.

~~(11)(10)~~ (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions that the United States department of housing and urban development determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.

(11) The department may be approved by the nationwide mortgage licensing system and registry as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses. (See compiler's comment regarding contingent suspension.)

Section 31. Section 32-9-133, MCA, is amended to read:

“32-9-133. Penalties — restitution. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking, conditioning, or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan origination business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender, *mortgage servicer*, or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense. (See compiler's comment regarding contingent suspension.)"

Section 32. Section 32-9-145, MCA, is amended to read:

"32-9-145. Escrow fund. (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender *or mortgage servicer* licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender *or mortgage servicer* shall place escrow funds in a depository institution prior to the end of the third business day following their receipt.

(2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

(3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.

(4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.

(5) An escrow fund account may be used only for:

(a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;

(b) a refund to the borrower;

(c) transfer to a depository institution;

(d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;

(e) a purpose authorized by the mortgage loan contract; or

(f) purposes of complying with an order issued by the commissioner or a court.

(6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and in compliance with 71-1-115. (See compiler's comment regarding contingent suspension.)"

Section 33. Section 32-9-148, MCA, is amended to read:

"32-9-148. Disclosure of mortgage costs by mortgage lender. (1) ~~Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the~~ A mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act of 1974, 12

U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. ~~If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.~~ *A mortgage lender shall comply with federal laws and rules regarding prepayment penalties.*

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a loan commitment fee, upon approval of the mortgage loan application, if the borrower is provided with a loan commitment in writing that is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment, including but not limited to:

(i) the time period during which the loan commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from the date of the loan commitment or the date of mailing, whichever is later;

(ii) the amount and payment terms of the loan commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the loan commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid loan commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the loan commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a loan commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender. (See compiler's comment regarding contingent suspension.)"

Section 34. Mortgage servicer duties. In addition to any duties imposed by other statutes or the common law, a mortgage servicer shall:

(1) safeguard and account for any money handled for the borrower;

(2) follow reasonable and lawful instructions from the borrower;

(3) act with reasonable skill, care, and diligence;

(4) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;

(5) file with the department upon request a report in a form and format acceptable to the department detailing the mortgage servicer's activities in this state, including:

(a) the number of mortgage loans the mortgage servicer is servicing;

(b) the type and characteristics of the loans in this state;

(c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies;

(d) information on loss mitigation activities, including details on workout arrangements undertaken; and

(e) information on foreclosures in this state;

(6) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation;

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

(c) a notice in the form and content acceptable to the department that the mortgage servicer is licensed in Montana and that complaints about the mortgage servicer may be submitted to the department; and

(7) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default.

Section 35. Section 32-9-150, MCA, is amended to read:

"32-9-150. Unique identifier for mortgage brokers, mortgage lenders, mortgage servicers, mortgage loan originators, and registered

mortgage loan originators. (1) Each licensed mortgage broker, mortgage lender, *mortgage servicer*, and mortgage loan originator shall post the mortgage broker's, mortgage lender's, *mortgage servicer's*, or mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.

(2) ~~The department shall post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers, mortgage lenders, and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry provide a link to the consumer access portion of the nationwide mortgage licensing system and registry on the department's website.~~

~~(3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state. (See compiler's comment regarding contingent suspension.)~~

Section 36. Section 32-9-151, MCA, is amended to read:

"32-9-151. Mortgage call reports. (1) ~~Each mortgage broker and mortgage lender entity licensee~~ shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.

(2) *Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the mortgage loan originator's loan origination activities are included in the report of condition submitted to the nationwide mortgage licensing system and registry.* (See compiler's comment regarding contingent suspension.)"

Section 37. Section 32-9-160, MCA, is amended to read:

"32-9-160. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.

(b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential *material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the extent that examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information, subject to the licensee's and any uninvolved person's reasonable expectation of privacy* and, although filed with the department as provided in this part, ~~are that information is~~ not subject to public inspection, *subpoena, or discovery except as directed by a court of law.*

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, *mortgage servicers*, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access. (See compiler's comment regarding contingent suspension.)"

Section 38. Repealer. The following sections of the Montana Code Annotated are repealed:

32-9-114. Provisional licenses and previously licensed persons.

32-9-127. Compliance of current mortgage brokers, mortgage lenders, and mortgage loan originator licensees with background check and minimum standards — renewals.

Section 39. Codification instruction. [Sections 8, 21, 22, 24, 25, and 34] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 8, 21, 22, 24, 25, and 34].

Approved May 5, 2011

CHAPTER NO. 318

[HB 106]

AN ACT ESTABLISHING THE 24/7 SOBRIETY PROGRAM IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR SOBRIETY TESTING BY COUNTY SHERIFFS OR DESIGNEES; PROVIDING FOR FEES, PROBATIONARY DRIVER LICENSES, ADMINISTRATIVE RULES, AND

PENALTIES; EXPANDING THE PENALTIES FOR A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-7-309, 46-18-201, AND 61-5-208, MCA.

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

Section 1. Short title. [Sections 1 through 6] may be cited as the “Montana 24/7 Sobriety Program Act”.

Section 2. Purpose — definitions. (1) The legislature declares that driving in Montana upon a way of the state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of [sections 1 through 6] is:

(a) to protect the public health and welfare by reducing the number of people on Montana’s highways who drive under the influence of alcohol or dangerous drugs; and

(b) to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders.

(3) As used in [sections 1 through 6], the following definitions apply:

(a) “Department” means the department of justice provided for in 2-15-2001.

(b) “Sobriety program” or “program” means the 24/7 sobriety program established in [section 3].

(c) “Testing” means a procedure for determining the presence and level of alcohol or a dangerous drug, as defined in 50-32-101, in an individual’s blood, breath, or urine and includes any combination of the use of breath testing, drug patch testing, urinalysis, or continuous or transdermal alcohol monitoring.

Section 3. Sobriety program created. (1) There is a statewide 24/7 sobriety program within the department of justice to be administered by the attorney general.

(2) If a county sheriff chooses to participate in the sobriety program, the department shall assist in the creation and administration of the program in the county in the manner provided in [sections 1 through 6]. The department shall also assist counties in which a sobriety program exists in determining alternatives to incarceration.

(3) (a) If a county participates in the program, the sheriff may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the sheriff pursuant to [sections 1 through 6], except that the sheriff’s designee may not determine whether to participate in the sobriety program.

(b) The sheriff shall establish the testing locations and times for the county but must have at least one testing location and two daily testing times approximately 12 hours apart.

Section 4. Rulemaking — testing fee. The attorney general shall adopt rules to implement [sections 1 through 6]. The rules must:

(1) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;(2) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(3) provide for the establishment and use of local accounts for the deposit of fees collected pursuant to these rules; and

(4) require and provide for the approval of a sobriety program data management technology plan that must be used by the department and participating counties to manage testing, data access, fees and fee payments, and any required reports.

Section 5. Authority of court to order participation in sobriety program — probationary license — condition of parole. (1) If an individual convicted of a second or subsequent offense of driving under the influence in violation of 61-8-401 or second or subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's successful completion of a court-approved chemical dependency treatment program and proof of insurance pursuant 61-6-301, notify the department, that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual must complete a certain portion of a suspension period before a probationary license may be issued.

(2) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(3) The court may condition any bond or pretrial release for an individual charged with a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

(4) The court may condition the granting of a suspended execution of sentence, or probation for an individual convicted of a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

(5) The board of pardons and parole, the department of corrections, or a parole officer may condition parole for a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

Section 6. Collection, distribution, and use of testing fees. The sheriff of a county in which a sobriety program exists shall collect the testing fee required by the rules of the department and deposit the fees into the local sobriety program account established pursuant to department rules. The fee must be distributed according to those rules to the proper county for use by the sheriff or the sheriff's designee pursuant to the terms determined by the sheriff in accordance with the provisions of [sections 1 through 6] and the rules implementing [sections 1 through 6].

Section 7. Section 45-7-309, MCA, is amended to read:

“45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when the person knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15; or

(g) *purposely failing to comply with the requirements of the sobriety program provided for in [sections 1 through 6] if ordered by a court to participate in the program.*

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

Section 8. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

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

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) *participation in the sobriety program provided for in [sections 1 through 6] for a second or subsequent violation of 61-8-401 or 61-8-406;*

~~(p)~~ any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

~~(p)~~(q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.”

Section 9. Section 61-5-208, MCA, is amended to read:

“61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver’s license. (1) The department may not suspend or revoke a driver’s license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in *[section 5]* and 61-2-302 and *except as otherwise provided in this section*, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) ~~(i) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon~~ Upon receiving a report of a *person’s* conviction or forfeiture of bail or collateral not vacated for a *first offense of violating 61-8-401 or 61-8-406*, the department shall suspend the driver’s license or driving privilege of the person for a period of 6 months.

~~(ii) Upon receiving a report of a person’s conviction or forfeiture of bail or collateral not vacated for a second, third, or subsequent offense of violating 61-8-401 or 61-8-406 within 5 years of the first offense, the department shall the time period specified in 61-8-734, the department shall~~ suspend the driver’s license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver’s license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course; or treatment, or both, are completed.

(iii) Upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401 or 61-8-406 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

~~(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.~~

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 10. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 1 through 6].

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 6, 2011

CHAPTER NO. 319

[HB 111]

AN ACT IMPROVING STATE TAX ADMINISTRATION BY PROVIDING THAT 30% OF THE LODGING FACILITY USE TAX ATTRIBUTABLE TO EXPENDITURES BY STATE AGENCIES FOR IN-STATE LODGING BE DEPOSITED IN THE STATE GENERAL FUND; ELIMINATING THE REIMBURSEMENT OF LODGING FACILITY USE TAXES PAID FROM OTHER STATE FUNDS TO THE STATE GENERAL FUND; AMENDING SECTIONS 15-65-121 AND 15-65-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-65-121, MCA, is amended to read:

“15-65-121. Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. *The department shall deposit 30% of the amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies in the state general fund and distribute the portion of the amount deducted that was paid with federal funds to the department of administration for return to the federal government as provided in 17-3-106(2).* The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the ~~fund or funds from which in-state lodging expenditures were paid by state agencies~~ *state general fund, distributed to the department of administration,* or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

- (a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;
- (b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;
- (c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;
- (d) 67.5% to be used directly by the department of commerce; and
- (e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the

proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.”

Section 2. Section 15-65-131, MCA, is amended to read:

“15-65-131. State agencies to account for in-state lodging expenditures. Each state agency shall account for in-state lodging expenditures in a manner that will enable the department to determine total expenditures for in-state lodging by state agencies in order to make an allocation *a deposit* of a portion of the tax proceeds imposed by 15-65-111 ~~to the appropriate fund or funds in the state general fund and distribute the portion of taxes paid with federal funds to the federal government~~ as provided in 15-65-121. ~~Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each fund shall reimburse the state general fund for the deposit made pursuant to 15-65-121.”~~

Section 3. Effective date. [This act] is effective July 1, 2011.

Section 4. Applicability. [Sections 1 and 2] apply to expenditures by state agencies for in-state lodging that are paid after June 30, 2011.

Approved May 5, 2011

CHAPTER NO. 320

[HB 133]

AN ACT REVISING AND CLARIFYING THE PROCESSES AND REQUIREMENTS RELATING TO THE CONTROL OF NOXIOUS WEEDS; AUTHORIZING A WEED CONTROL BOARD TO SEEK A COURT ORDER TO MANAGE NOXIOUS WEEDS; PROVIDING FOR CIVIL PENALTIES FOR FAILURE TO CONTROL NOXIOUS WEEDS; PROVIDING FOR A LIEN ON PROPERTY FOR UNPAID CIVIL PENALTIES; AND AMENDING SECTIONS 7-22-2123, 7-22-2124, AND 7-22-2148, MCA.

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

Section 1. Section 7-22-2123, MCA, is amended to read:

“7-22-2123. Procedure in case of noncompliance — notice. (1) (a) ~~When~~ Whenever a complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's landowner's land within the district, ~~that person must be notified the board shall attempt informal resolution by mail or telephone of the complaint or alleged presence of noxious weeds by notifying the landowner by mail or telephone. and the~~ If the situation is not resolved after the initial mail or telephone contact, the board may request inspection of the land by sending the request by certified mail at least 10 days after the initial contact is attempted. The

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by mail to the registered agent. The landowner or the landowner's representative shall respond to the notice within 10 days.

(c) If the board or the board's agent and the landowner or landowner's representative agree to an inspection, the board or its authorized the board's agent and the landowner or the landowner's representative shall inspect the land at an agreeable time. The inspection must occur within 10 10 days of notification of the landowner after the agreed-upon inspection date. If within 10 10 days after notification sending a certified letter to the address listed on the tax records for the property or the agent of service the board is unable to gain cooperation of the person determine the owner of the property or the landowner objects to the inspection, the board or its authorized the board's agent may seek a court order to enter and inspect the land to determine if the complaint is valid noxious weeds are present on the property.

(2) (a) (i) If the board or the board's agent finds noxious weeds are found on the property as a result of the inspection, the board or coordinator the board's agent shall notify the person landowner or the person's landowner's representative by certified mail that noxious weeds were found on the property and shall seek voluntary compliance from the landowner or landowner's representative with the district noxious weed management program.

(ii) The notice must contain the language specified in this section.

(iii) If ownership of the land is in question or the board believes it is advisable, the board or the board's agent may also post in a conspicuous place on the property a dated order providing notice that noxious weeds have been found on the property and directing the landowner or landowner's representative to comply with the district noxious weed management program.

(b) If the board or the board's agent is unable to obtain voluntary compliance or cooperation has not occurred with the district noxious weed management program by the landowner or landowner's representative within 10 days of the notification after the notification or within 10 days after posting the notice required under this subsection (2)(a), the person landowner is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2124 or, at the discretion of the board of county commissioners, a civil penalty as established by the board following a public hearing after providing notice as required in 7-1-2121.

(c) (i) Within 10 days after the board has issued a notice to comply with the noxious weed management program, the landowner or landowner's representative may file a request for a hearing before the board if the landowner or landowner's representative disagrees with the noxious weed management control measures proposed to be taken by the board.

(ii) *If the landowner's objection to the board's action remains after the hearing, the landowner has 10 days to appeal the board's decision to the district court having jurisdiction in the county in which the property is located.*

(d) *If a request for a hearing has been filed pursuant to subsection (2)(c), the board or the board's agent may not take any action to control the noxious weeds until after the hearing and authorization from the board or the court.*

(e) *If the board imposes the civil penalty authorized in subsection (2)(b) and a hearing is requested in court, the penalty may be sought for each year or portion of a year during which the landowner is not in compliance with the district noxious weed management program.*

(3) A ~~person~~ landowner is considered to be in compliance if the ~~person~~ landowner submits and the board accepts a proposal to undertake specified control measures and *is remains* in compliance as long as the ~~person~~ landowner performs according to the terms of the proposal. The proposal must include a requirement that the ~~person~~ landowner or landowner's representative notify the board as measures in the proposal are taken. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(4) In accepting or rejecting a proposal, the board shall consider the economic impact on the ~~person~~ landowner and the ~~person's~~ landowner's neighbors, practical biological and environmental limitations, and alternative control methods to be used.

(5) *If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:*

(a) *until the actions specified in the weed management plan or court order are complete;*

(b) *for the length of time specified in the order; or*

(c) *for 5 years if the order does not specify a time limit.*

(6) *The department shall provide boards with a uniform notification form that must be used when notifying landowners of potential noncompliance with this part. The form must:*

(a) *list the noxious weeds found on the property;*

(b) *provide the legal description of the property;*

(c) *provide the address of the property, if available;*

(d) *state the fact that the presence of the weeds violates state law and that the landowner has 10 days after mailing of the notice to contact the board or its agent;*

(e) *provide the address and phone number for the board or its agent;*

(f) *notify the landowner of the landowner's:*

(i) *responsibility to submit a weed management proposal; and*

(ii) *right to request a hearing to contest the finding of noncompliance, including the timeframe for making the request; and*

(g) *specify the actions the board may take if the landowner fails to remove the weeds, including but not limited to the anticipated costs of destroying the weeds, the 25% penalty allowed under 7-22-2124, and the board's intent to file a court action to impose a civil fine that may become a lien upon the property."*

Section 2. Section 7-22-2124, MCA, is amended to read:

"7-22-2124. Destruction of weeds by board — court order — deposits.

(1) (a) *If corrective action is not taken within the time specified in 7-22-2123(2)*

and a proposal is not made and accepted as provided in 7-22-2123(3), the board may seek a court order to enter upon the person's landowner's land and institute appropriate noxious weed control measures, which may include contracting with a commercial applicator pursuant to subsection (1)(c)(iii), if:

(i) the landowner or the landowner's representative does not take corrective action within the time specified in 7-22-2123(2);

(ii) a proposal is not made and accepted as provided in 7-22-2123(3); and

(iii) the board does not receive a formal objection or a request for a hearing.

(b) If the board decides to seek a civil penalty under 7-22-2123(2)(b) instead of taking the control measures, the board shall obtain judicial approval from the court for the penalty.

(c) (i) ~~In that case~~ After taking action pursuant to subsection (1)(a) or obtaining a court order and instituting appropriate noxious weed control measures, the board shall submit a bill to the person landowner, itemizing hours of labor, material, and equipment time, together with that covers the costs of the weed control measures and contains a penalty not exceeding 25% of the total cost incurred except that a penalty may not be assessed if contact was not made with the landowner or the landowner's representative pursuant to 7-22-2123. The bill must itemize the hours of labor, cost of material, equipment time, legal fees, and court costs or provide an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1)(c)(iii). The board shall provide a copy of the bill, including the penalty, to the county clerk and recorder. When the penalty is collected, it must be credited to the noxious weed fund created pursuant to 7-22-2141 to be used for appropriate control measures pursuant to this section.

(ii) Labor, material, and equipment used by the board in instituting appropriate noxious weed control measures must be valued at the current rate paid for commercial management operations in the district. The bill must reflect actual legal fees and court costs incurred by the board. The bill submitted to the landowner under subsection (1)(b)(i) must specify and order a payment due date of 30 days from the date the bill is sent.

(iii) The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to destroy the weeds. The commercial applicator shall agree to carry any all insurance required by the board.

(c) All penalties collected pursuant to this section are in addition to other penalties authorized under this chapter and must be credited to a noxious weed fund created under 7-22-2141.

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3)(2) If a person receiving landowner who received an order to take corrective action requests an injunction or stay of the corrective action in district court within 10 days of receipt of the order, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. ~~In that case~~ If the board declares an emergency and institutes appropriate measures to control the noxious weeds, the person landowner who received the order under 7-22-2123(2)(a) is liable for costs as provided in subsection (1) of this section only to the extent determined appropriate by the board, the board of county commissioners, or the court that finally resolves the matter."

Section 3. Section 7-22-2148, MCA, is amended to read:

"7-22-2148. Tax liability for payment Payment of weed control expenses — tax liability — lien. (1) (a) The expenses referred to in incurred

by the board for noxious weed control undertaken pursuant to 7-22-2124 shall not be paid by the county out of the noxious weed fund, ~~and unless.~~

(b) If the sum to be repaid by the ~~person~~ landowner billed under 7-22-2124 is not repaid on or before the date due, the county clerk shall certify the amount thereof due, with the description of the land to be charged, and shall enter the same amount on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation for any reason, the amount of such charge due and to be repaid may be recovered by direct claim against the lessee landowner and collected in the same manner as personal taxes. (c) ~~When such charges are~~ All amounts collected, they shall be credited to pursuant to subsection (1)(b) must be deposited in the noxious weed fund.

(2) ~~In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to the owner, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof.~~

(2) *If a civil penalty is imposed under 7-22-2123, the penalty is, until paid in full, a lien in the amount of the penalty on the infested parcel of the property that lies within the district and belongs to the landowner on whom the penalty was imposed.”*

Approved May 5, 2011

CHAPTER NO. 321

[HB 198]

AN ACT CLARIFYING A PUBLIC UTILITY'S POWER OF EMINENT DOMAIN; CLARIFYING THAT A PERSON ISSUED A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT HAS THE POWER OF EMINENT DOMAIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Power of eminent domain. A public utility as defined in 69-3-101 may acquire by eminent domain any interest in property, as provided in Title 70, chapter 30, for a public use authorized by law to provide service to the customers of its regulated service.

Section 2. Power to exercise eminent domain. A person issued a certificate pursuant to this chapter may acquire by eminent domain any interest in property, as provided in Title 70, chapter 30, for a public use authorized by law to construct a facility in accordance with the certificate.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 1, and the provisions of Title 69, chapter 3, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 20, part 1, and the provisions of Title 75, chapter 20, part 1, apply to [section 2].

Section 4. Contingent voidness. If a repeal of the provisions of Title 75, chapter 1, parts 1 through 3, or a repeal of the provisions of Title 75, chapter 20, parts 1 through 4, is passed and approved during the 62nd legislative session, then [this act] is void.

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

Section 6. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to certificates issued after September 30, 2008.

Approved May 9, 2011

CHAPTER NO. 322

[HB 249]

AN ACT LIMITING THE PERSONAL LIABILITY OF A CORPORATE SHAREHOLDER FOR THE ACTS AND DEBTS OF THE CORPORATION; AND AMENDING SECTION 35-1-534, MCA.

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

Section 1. Section 35-1-534, MCA, is amended to read:

“35-1-534. Liability of shareholders. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in 35-1-623 or specified in the subscription agreement as provided in 35-1-622.

(2) Unless otherwise provided in the articles of incorporation, a shareholder ~~of who is:~~

(a) *active in a corporation is not personally liable for the acts or debts of the corporation except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct;*

(b) *not active in the corporation is not personally liable unless the corporate veil is pierced or the shareholder agrees in writing to assume personal liability.”*

Approved May 6, 2011

CHAPTER NO. 323

[HB 262]

AN ACT MAKING PERMANENT THE EMERGENCY MEDICAL SERVICE PROVIDERS GRANT PROGRAM; APPROPRIATING FUNDS; REPEALING SECTION 12, CHAPTER 437, LAWS OF 2009; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Repealer. Section 12, Chapter 437, Laws of 2009, is repealed.

Section 2. Appropriation. There is appropriated \$1 million from the highway nonrestricted account provided for in 15-70-125 to the department of transportation in each fiscal year of the biennium beginning July 1, 2011, to carry out the purposes of the emergency medical service providers grant program provided for in Title 61, chapter 2, part 5. This is a one-time-only appropriation for the biennium beginning July 1, 2011.

Section 3. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved and if House Bill No. 2 includes an appropriation for the emergency medical service providers grant program, then [section 2 of this act] is void.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 324

[HB 296]

AN ACT RELATING TO THE SOUTHWESTERN MONTANA VETERANS' HOME; EXTENDING CIGARETTE TAX REVENUE CONTRIBUTIONS TO AN ACCOUNT FOR USE IN CONSTRUCTION OF THE SOUTHWESTERN MONTANA VETERANS' HOME; ESTABLISHING THE SOUTHWESTERN MONTANA VETERANS' HOME CAPITAL PROJECT; APPROPRIATING MONEY FOR A CAPITAL PROJECT; PROVIDING FOR OTHER MATTERS RELATED TO THE APPROPRIATION; AUTHORIZING CONSTRUCTION; PROVIDING CONDITIONS FOR A TRANSFER OF MONEY TO THE GENERAL FUND; AMENDING SECTION 16-11-119, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the 61st Legislature in section 1, Chapter 461, Laws of 2009, provided for the establishment of a southwestern Montana state veterans' home; and

WHEREAS, the 61st Legislature established a state special revenue account that is funded by a portion of cigarette tax collections for the construction of a state veterans' home in southwestern Montana; and

WHEREAS, a portion of cigarette tax collections has been historically used for the operation and maintenance of state veterans' nursing homes; and

WHEREAS, based on a recent cost estimate, additional cigarette tax collections are needed in the state special revenue account to construct the state veterans' home in southwestern Montana in the future.

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

Section 1. Section 16-11-119, MCA, is amended to read:

"16-11-119. (Temporary) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in an account in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.

(b) for fiscal years ~~ending June 30, 2010~~, *beginning July 1, 2011*, and *ending June 30, 2014 2015*, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;

(c) 2.6% in the long-range building program account provided for in 17-7-205;

(d) 44% in the health and medicaid initiatives account provided for in 53-6-1201; and

(e) the remainder to the state general fund.

(2) If money in the state special revenue account for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201. (Terminates June 30, 2011—sec. 35(1), Ch. 486, L. 2009.)

16-11-119. (Effective July 1, 2011) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) for fiscal years ~~ending June 30, 2010~~, *beginning July 1, 2011*, and *ending June 30, 2014* ~~2015~~, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;

(c) 2.6% in the long-range building program account provided for in 17-7-205;

(d) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(e) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 2. Definitions. For the purposes of [sections 2 through 6], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, and furnishing of the project authorized in [sections 3 through 6].

(2) "Southwestern Montana veterans' home project" means the capital project in Silver Bow County for the purpose of a state veterans' nursing home authorized in [sections 3 through 6]. The project is administered by the department of public health and human services pursuant to 53-1-602.

Section 3. Planning and design. The department of administration may proceed with the planning and design of the southwestern Montana veterans' home project prior to the receipt of other funding sources. The department of administration may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 4. Capital project — contingent funds. If the southwestern Montana veterans' home project is financed, in whole or in part, with

appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until the department of public health and human services has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 5] for the project.

Section 5. Capital project appropriations. (1) There is appropriated \$4,812,500 from state special revenue account established in section 2, Chapter 461, Laws of 2009, to the department of administration for the southwestern Montana veterans' home project.

(2) There is appropriated \$8,937,500 from the federal special revenue fund to the department of administration for the southwestern Montana veterans' home project.

(3) The department of administration is authorized to transfer the appropriations in subsections (1) and (2) among the necessary fund types for this project.

Section 6. Legislative consent and intent. The appropriations authorized in [section 5] constitute legislative consent for the southwestern Montana veterans' home project within the meaning of 18-2-102. The legislature intends for the project to be part of the long-range building program.

Section 7. Contingency — termination and transfer to the general fund. If House Bill No. 439 is passed and approved in a form that appropriates at least \$5 million from the capital projects fund for the construction of the southwestern Montana veterans' home and [sections 2 through 7 of House Bill No. 439] become effective pursuant to the contingency contained in [section 10 of House Bill No. 439], then:

(1) [sections 1 through 6 of this act] terminate on the date on which [sections 2 through 7 of House Bill No. 439] become effective;

(2) the state treasurer shall transfer the remaining fund balance in the state special revenue fund established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana to the general fund; and

(3) the department of administration shall notify the code commissioner of the occurrence of any determination made pursuant to this section and the date of the occurrence.

Section 8. Coordination instruction. If both Senate Bill No. 31 and [this act] are passed and approved, then [section 12 of Senate Bill No. 31], amending 16-11-119, is void.

Section 9. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1, 5, and 6] are effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 325

[HB 297]

AN ACT EXTENDING THE TIME FOR APPLYING FOR A HISTORIC RIGHT-OF-WAY ON STATE LANDS; AMENDING SECTION 77-1-130, MCA; AMENDING SECTION 5, CHAPTER 461, LAWS OF 1997, SECTION 6,

CHAPTER 270, LAWS OF 2001, AND SECTIONS 2, 3, AND 4, CHAPTER 57, LAWS OF 2005; AND PROVIDING A TERMINATION DATE.

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

Section 1. Section 77-1-130, MCA, is amended to read:

“77-1-130. (Temporary) Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees. (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant’s private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, ~~2011~~ 2015, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of \$50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant’s predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before 1997; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

(c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

(b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant’s successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.

(b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, ~~2016~~ 2025—secs. 2, 3, 4, Ch. 57, L. 2005.)"

Section 2. Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2025."

Section 3. Section 6, Chapter 270, Laws of 2001, is amended to read:

"**Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2011 2016 2025."

Section 4. Section 2, Chapter 57, Laws of 2005, is amended to read:

"**Section 2.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2016 2025."

Section 5. Section 3, Chapter 57, Laws of 2005, is amended to read:

"**Section 3.** Section 6, Chapter 270, Laws of 2001, is amended to read:

"**Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2011 2016 2025.""

Section 6. Section 4, Chapter 57, Laws of 2005, is amended to read:

"**Section 4. Termination.** [Section 1] terminates October 1, ~~2016~~ 2025."

Section 7. Termination. [Section 1] terminates October 1, 2025.

Approved May 5, 2011

CHAPTER NO. 326

[HB 370]

AN ACT INCREASING THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE FOR OPERATIONS AND MAINTENANCE AT STATE PARKS AND STATE-OWNED FACILITIES AT VIRGINIA CITY AND NEVADA CITY; REVISING THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE

PROCESS; AMENDING SECTIONS 23-1-105 AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 23-1-105, MCA, is amended to read:

“23-1-105. Fees and charges — use of motor vehicle registration fee.

(1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(18)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.

(7) Any increase in the motor vehicle registration fee collected pursuant to 61-3-321(18)(a) on or after [the effective date of this act] that is dedicated to state parks must be used by the department for maintenance and operation of state parks.”

Section 2. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles,

snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (19):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

- (a) if the vehicle is 4 or less years old, \$217;
- (b) if the vehicle is 5 through 10 years old, \$87; and
- (c) if the vehicle is 11 or more years old, \$28.

(3) Except as provided in subsection (14), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

- (a) if the declared weight is less than 6,000 pounds, \$61.25; or
- (b) if the declared weight is 6,000 pounds or more, \$148.25.

(4) Except as provided in subsection (14), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

- (a) 2,850 pounds and over, \$10; and
- (b) under 2,850 pounds, \$5.

(5) Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

- (i) less than 2 years old, \$282.50;
- (ii) 2 years old and less than 5 years old, \$224.25;
- (iii) 5 years old and less than 8 years old, \$132.50; and
- (iv) 8 years old and older, \$97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

- (i) a one-time registration fee of \$237.50;
- (ii) unless a new set of license plates is being issued, an insurance verification fee of \$5, which must be deposited in the account established under 61-6-158; and
- (iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection (14), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (14), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

- (a) under 16 feet in length, \$72; and
- (b) 16 feet in length or longer, \$152.

(10) Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and (14), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of \$40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) Except as provided in subsection (12)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (12) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection (12)(a) must be deposited in the state general fund.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(14) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in *either* subsection (18)(b) or (18)(c), an additional fee of ~~\$4~~ \$6 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the ~~\$4~~ \$6 fee, the department of fish, wildlife, and parks shall use ~~\$3.50~~ \$5.37 for state parks, 25 cents for fishing access sites, and 25 38 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional ~~\$4~~ \$6 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(c) (i) *A person who registers one or more light vehicles may, at the time of annual registration, certify that the person does not intend to use any of the vehicles to visit state parks and fishing access sites and may make a written election not to pay the additional \$6 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected at any subsequent annual registration unless the person makes the written election to pay the additional fee on one or more of the light vehicles.*

(ii) *The written election not to pay the additional fee on a light vehicle expires if the vehicle is registered to a different person.*

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.”

Section 3. Effective date. [This act] is effective January 1, 2012.

Approved May 6, 2011

CHAPTER NO. 327

[HB 409]

AN ACT REVISING THE MEMBERSHIP OF THE COMMISSION ON PROVIDER RATES AND SERVICES; ALLOWING FOR APPOINTMENT OF TECHNICAL ADVISORS; AND AMENDING SECTION 53-10-203, MCA.

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

Section 1. Section 53-10-203, MCA, is amended to read:

“53-10-203. Commission on provider rates and services. (1) The department shall form an advisory commission to be known as the commission on provider rates and services to provide information to the department concerning provider services, costs, and reimbursement rates. The commission membership ~~must include a maximum of~~ *may consist of up to* 15 individuals representing providers, consumers of provider services, and family members of consumers and is as follows:

- (a) at least three providers;
- (b) at least three of a combination of consumers of provider services and family members of consumers;
- ~~(c) two employees of the department;~~
- ~~(d) one representative from the legislative fiscal division;~~
- ~~(e) one representative from the governor's office on budget and program planning;~~

~~(f)~~(c) subject to 5-5-234, one member of the majority party and one member of the minority party of the house of representatives; and

~~(g)~~(d) subject to 5-5-234, one member of the majority party and one member of the minority party of the senate.

(2) (a) *The following individuals shall participate as nonvoting members in commission meetings:*

(i) *a representative of the legislative fiscal division who is responsible for analyzing the department's budget;*

(ii) *a representative of the office of budget and program planning who is responsible for analyzing the department's budget and assisting in policy evaluation for the department; and*

(iii) *two department employees, one of whom must have responsibilities for developing and implementing policies related to the medicaid program and one of whom must have an in-depth knowledge of the topics under discussion by the commission.*

(b) *The individuals listed in subsection (2)(a) must be provided with all materials provided to the commission and be offered an opportunity to comment on matters before the commission.*

~~(2)~~(3) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

~~(3)~~(4) Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

~~(4)~~(5) The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

(6) *The commission may appoint, by majority vote, up to three technical advisors with experience in providing services to the populations served by the department. The technical advisors:*

(a) *may take part in commission meetings but may not vote on matters before the commission; and*

(b) *may not be reimbursed for their time or travel.*

~~(5)~~(7) The commission is allocated to the department for administrative purposes only as provided in 2-15-121."

Approved May 6, 2011

CHAPTER NO. 328

[HB 458]

AN ACT GENERALLY REVISING LAWS RELATED TO OUTFITTING; ELIMINATING NET CLIENT HUNTER USE EXPANSION; REVISING BOARD OF OUTFITTER DUTIES REGARDING NET CLIENT HUNTER USE; ELIMINATING CERTAIN FEES; AMENDING SECTIONS 2-15-1773, 37-47-201, 37-47-316, AND 37-47-318, MCA; AND REPEALING SECTION 37-47-317, MCA.

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

Section 1. Section 2-15-1773, MCA, is amended to read:

“2-15-1773. Board of outfitters. (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor:

- (a) one big game hunting outfitter;
- (b) one fishing outfitter;
- (c) two outfitters who are engaged in the fishing and hunting outfitting business;
- (d) two sportspersons; and
- (e) one member of the general public.

(3) ~~(a) A subcommittee composed of five members of the board shall review net client hunter use expansion requests as provided in 37-47-316, based on the criteria provided in 37-47-317, and report its determinations to the full board. A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.~~

~~(b) The subcommittee must consist of the two hunting outfitters, the two sportspersons, and the one member of the public serving on the board pursuant to subsection (2).~~

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

(6) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.”

Section 2. Section 37-47-201, MCA, is amended to read:

“37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards, guide standards, and professional guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional

guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use ~~or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan.~~ Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d);

(7) *maintain records of net client hunter use.*"

Section 3. Section 37-47-316, MCA, is amended to read:

~~"37-47-316. Request for net client hunter use expansion — operation — transfer of NCHU net client hunter use upon transfer of operations plan.~~ (1) ~~An outfitter who wishes to establish or expand NCHU shall present an expansion request to the board. A newly licensed outfitter licensed after April 28, 2001, has 5 1/2 years from the date of first licensure to establish NCHU, unless the newly licensed outfitter is purchasing the business of an existing outfitter, in which case the provisions of subsection (5) apply. The board shall evaluate the request based on the criteria provided in 37-47-317.~~

~~(2) For any establishment or expansion of NCHU approved by the board after March 1, 1996, the outfitter has until December 31, 2004, to establish the new NCHU. After December 31, 2004, the outfitter's client base must be adjusted to reflect the highest number of clients actually served, up to but not exceeding the number of clients authorized by the NCHU expansion request. This subsection (2) does not apply to an outfitter newly licensed after April 28, 2001.~~

~~(3) An outfitter may exceed the NCHU in any given year by the following percentages without formally requesting an NCHU expansion:~~

~~(a) 10% for an outfitter with 1 to 50 clients;~~

~~(b) 8% for an outfitter with 51 to 100 clients; and~~

~~(c) 2% for an outfitter with 101 to 300 clients.~~

~~(4) When an expansion of NCHU is approved, the outfitter who is granted the expansion shall operate within the limits of the NCHU. The flexibility to exceed NCHU in any given year, as outlined in subsection (3), does not apply to an outfitter who has been previously granted an NCHU expansion.~~

~~(5) The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of 5 1/2 years after transfer, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding 5 1/2 years, not to exceed the total authorized by the NCHU."~~

Section 4. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee — allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) ~~An~~ *an* outfitter shall pay an annual fee of \$2 for each client served.

(b) ~~An outfitter who is granted a net client hunter use expansion shall pay a fee of \$500 for each new client added to that outfitter's operations plan.~~

(c) (i) ~~An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of \$5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.~~

(ii) A fee is not required for the following:

(A) ~~an outfitter's base of operations camp;~~

(B) ~~camps established before January 1, 1999;~~

(C) ~~camps established on public land when use is directly regulated by public land use policies; or~~

(D) ~~camps on corporate timberlands where public access is not restricted.~~

(d) ~~An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of \$2,000 for each expansion request.~~

(2) ~~Fees~~ *The fee* collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. ~~The fees collected must be allocated as follows:~~

(a) ~~Revenue generated by the \$2 fee imposed in subsection (1)(a), the \$500 fee imposed in subsection (1)(b), and the \$2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~

(b) ~~Revenue generated by the \$5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board."~~

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

37-47-317. Criteria for board evaluation of NCHU expansion request — public comments.

Approved May 6, 2011

CHAPTER NO. 329

[HB 518]

AN ACT ALLOWING PEOPLE SUFFERING FROM MENTAL ILLNESS TO PREPARE A MENTAL HEALTH CARE ADVANCE DIRECTIVE DURING PERIODS OF MENTAL CAPACITY FOR USE DURING PERIODS OF MENTAL INCAPACITY; PROVIDING IMMUNITY FOR HEALTH CARE PROVIDERS AND INSTITUTIONS IN CERTAIN SITUATIONS; PROVIDING FOR JUDICIAL REVIEW; AMENDING SECTION 72-5-402, MCA; AND REPEALING SECTION 53-21-153, MCA.

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

Section 1. Purpose. The purpose of [sections 1 through 20] is to:

- (1) promote more timely, informed, compassionate, and effective mental health care;
- (2) recognize the right of any person who has capacity to give or withhold informed consent for mental health services;
- (3) prevent unnecessary delays in receiving care for a mental disorder in times of impending or actual crisis;
- (4) allow a person with mental illness to provide the legal authority for provision of health care during a period of incapacity, even over the person's own protest;
- (5) reduce the use of costly legal interventions, including emergency detentions, civil commitment, involuntary medication, and guardianship;
- (6) minimize the impacts of crisis on people, families, communities, and providers; and
- (7) support the relationship between the provider and the patient by promoting thoughtful, constructive, and timely communication.

Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

- (1) "Agent" means a person designated in a directive to make health care decisions for the principal granting power.
- (2) "Capacity" is the ability of a person to understand the significant benefits and risks of and alternatives to proposed health care and to make and communicate a health care decision.
- (3) "Directive" means a mental health care advance directive or any part of a mental health care advance directive.
- (4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.
- (5) "Incapacitated" means that a person is determined by the supervising health care provider or a court to lack the ability to give or withhold consent for medical care.
- (6) "Principal" means a person who executes a directive, whether or not that directive designates an agent to make health care decisions.
- (7) "Supervising health care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who undertakes primary responsibility for a principal's health care.

Section 3. Presumption of capacity. (1) A person is presumed to have capacity to make a health care decision and to create or revoke a directive.

(2) [Sections 1 through 20] do not affect the right of a person to make health care decisions while having capacity to do so.

Section 4. Scope of mental health care advance directive. (1) An adult with capacity may execute a directive. A minor at least 16 years of age with capacity or an emancipated minor as defined in 41-1-401 with capacity may execute a directive.

(2) A directive must:

(a) be in writing;

(b) contain language that clearly indicates that the principal intends to create a directive;

(c) be dated and signed by the principal or at the principal's direction and in the principal's presence if the principal is unable to sign; and

(d) be notarized.

(3) A directive executed in accordance with [sections 1 through 20] is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.

(4) A directive may include any provision relating to mental health treatment, any other medical treatment that may directly or indirectly affect mental health, and the general care of the principal. A directive may include but is not limited to:

(a) instructions for mental health treatment, including medical, behavioral, and social interventions;

(b) consent to specific types of mental health treatment, including medications, other medical treatment, hospitalization, and nonmedical interventions;

(c) refusal to consent to specific types of mental health treatment;

(d) consent to admission to and retention in a facility for mental health treatment;

(e) instructions limiting the revocability of the directive;

(f) descriptions of situations that may cause the principal to experience a mental health crisis;

(g) descriptions of behaviors and other indicators that the principal lacks capacity;

(h) instructions to apply interventions that deescalate crisis behaviors and instructions to avoid interventions that escalate crisis behaviors;

(i) instructions regarding who should or should not be notified of the principal's admission to a treatment facility or be allowed to visit the principal at the facility;

(j) appointment of an agent to make mental health treatment decisions on the principal's behalf; and

(k) the principal's nomination of a guardian, limited guardian, or conservator for consideration by the court if guardianship proceedings are commenced.

Section 5. Validity of appointment of agent. If the directive appoints an agent, the agent may accept the appointment by signing the directive. The agent's signature does not have to be witnessed, notarized, or otherwise validated. The lack of agent's signature does not affect the validity of the

directive. The directive may provide for one or more alternate agents. The authority of the agent is in effect only after a determination of incapacity as provided in [sections 1 through 20] and only for as long as the period of incapacity.

Section 6. Prohibited elements. A directive may not:

- (1) create an entitlement to mental health treatment or other medical treatment;
- (2) obligate any health care provider, professional person, health care facility, or insurer to pay the costs associated with the treatment requested;
- (3) obligate any health care provider, professional person, or health care facility to be responsible for services outside the scope of services the person or facility normally provides; or
- (4) bind any person who is not a provider of health care services to confer any benefit on the principal.

Section 7. When a directive takes effect — determination of incapacity. (1) A directive is valid upon execution but takes effect only upon a determination of incapacity as provided in [sections 1 through 20].

(2) A principal, agent, professional person, or health care provider may seek a determination regarding whether the principal is incapacitated or has regained capacity.

(3) For the purpose of triggering the directive, a determination that the principal lacks capacity or has regained capacity must be made by the supervising health care provider.

(4) For the purpose of triggering the directive, a directive may require the concurrence of two health care providers, one of whom must be the supervising health care provider in the determination of incapacity. The directive may require that one of the concurring providers is a psychiatrist or other physician.

(5) The determination of incapacity must consider all factors identified in the directive as evidence of incapacity.

(6) Unless otherwise specified in the directive, the authority of an agent becomes effective upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has regained capacity.

Section 8. Provider of mental health services. (1) A provider of mental health services or a supervising health care provider shall:

(a) inquire whether a directive exists and make a written record of the response; and

(b) include a copy of the directive and any written revocation in the health care record if the directive or revocation are provided.

(2) A supervising health care provider who makes or is informed of a determination that a principal lacks or has regained capacity or that another condition exists that affects an individual instruction or the authority of an agent shall promptly record the determination or condition in the principal's health care record and communicate the determination or condition to the principal, if possible, and to any person or agent authorized to make health care decisions for the patient.

(3) After a determination of incapacity a supervising health care provider shall communicate health care decisions to the principal to the extent possible.

(4) A health care provider or institution providing care to the principal under the authority of a directive shall comply with the provisions of the

directive and with all reasonable interpretations of the directive by the agent to the fullest extent possible unless the supervising health care provider determines that:

- (a) compliance violates the accepted standard of care;
- (b) compliance conflicts with the applicable law or a court order;
- (c) the requested treatment is not reasonably available; or
- (d) an emergency situation exists and compliance endangers the principal's life or health.

(5) A health care provider or mental health professional may not require or prohibit the execution or revocation of a directive as a condition for providing health care. A health care provider's inability to follow the specific terms of the directive because it violates the standard of care does not require a revocation of the directive. A health care provider or mental health professional may not promote the creation, alteration, adoption, or revocation of a directive under circumstances that are or reasonably appear to be coercive.

Section 9. Duties of agent. (1) An agent shall act in good faith.

(2) An agent shall make health care decisions in accordance with the principal's written instructions or directive if any. When the agent must make decisions not addressed by the written instructions or directive, the agent shall base decisions on the principal's known wishes and upon the agent's best judgment about how the principal would decide based on the principal's own values and experience.

(3) An agent may resign by giving written notice to the principal. If the directive is in effect at the time of the resignation, the agent may resign by giving written notice to the supervising health care provider.

Section 10. Health care decisions in event of the principal's protest. An agent may make a health care decision over the protest of a principal who lacks capacity if:

- (1) the directive is irrevocable at times of incapacity;
- (2) the directive authorizes the agent to make the health care decision at issue; and
- (3) the health care that is to be provided, continued, withheld, or withdrawn is determined and documented by the supervising health care provider to be medically appropriate and is otherwise permitted by law.

Section 11. Explicit authorization required for certain treatment. Electroconvulsive therapy or surgical or experimental treatment may be provided to a principal after a determination of incapacity only if the directive explicitly consents to the particular therapy or treatment.

Section 12. Authorization for admission to inpatient treatment — effect of directive. (1) A principal whose directive is irrevocable during a period of incapacity and who has provided consent to inpatient treatment in the directive or authorized an agent to consent to inpatient treatment may be admitted to inpatient mental health treatment if:

(a) a physician or psychiatric advanced practice registered nurse performs an evaluation of the principal, including consideration of history, diagnosis, and treatment needs and makes a written determination that the principal needs further inpatient evaluation or treatment that cannot be provided in a less restrictive setting; and

(b) the agent, if any, provides written consent.

(2) The directive may provide limited consent to inpatient treatment, including limitations upon the length of time for each period of hospitalization and limitations on the facility or facilities to which the principal consents to be admitted.

Section 13. Expiration. A directive is valid indefinitely unless the directive includes an expiration date. A directive that expires during a period of incapacity of the principal remains in effect until the principal's capacity is restored.

Section 14. Revocation. (1) The principal may revoke a directive in whole or in part orally or in writing at any time unless the directive provides that:

(a) the directive is not revocable during a period of incapacity; or

(b) the directive is not revocable for a specified period of time after a determination of incapacity.

(2) As allowed by the terms of the directive, the principal may:

(a) revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider; and

(b) revoke other parts of a directive other than the designation of an agent at any time and in any manner that communicates an intent to revoke.

(3) A health care provider, agent, guardian, or conservator who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution where the patient is receiving care.

(4) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the directive or in a durable power of attorney.

(5) A directive revokes all prior directives unless the newest directive instructs otherwise.

Section 15. Effect of directive on existing law. (1) A directive does not override other provisions of law including Title 46, chapter 14, Title 53, chapter 21, part 1, and Title 72, chapter 5.

(2) A directive has no legal effect during a period of involuntary inpatient commitment or a period during which a person is subject to a court order for the care, custody, and treatment of the person pursuant to Title 46, chapter 14.

(3) If a principal executes other directives allowed under Montana law, including a living will or other power of attorney, the other directives must be construed as consistent with and may not override the mental health care advance directive.

(4) In addition to a directive executed under [sections 1 through 20], a principal may designate an agent for other medical decisionmaking under 72-5-501 and 72-5-502.

Section 16. Nomination of guardian or conservator. A directive may nominate a guardian or conservator. The court in any guardianship proceeding shall determine whether there is a directive and shall appoint the guardian or conservator nominated in the directive, except when good cause or reason for disqualification exists.

Section 17. Decisions by guardian or conservator. When a valid directive is in existence at the time of a judicial determination of incapacity and appointment of a guardian or conservator of the principal:

(1) a guardian or conservator shall comply with the instructions in a principal's directive and may not revoke the principal's directive unless the appointing court provides authorization; and

(2) absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian or conservator.

Section 18. Health care information. Unless otherwise specified in the directive, the agent has the same rights as the principal to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information during a period of time when the agent is legally authorized to act on behalf of the principal.

Section 19. Immunities. (1) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or discipline for unprofessional conduct for:

(a) complying with a health care decision of an agent who has authority under a directive to make a health care decision for a principal, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person claiming to be an agent based on a good faith belief that the person then lacked authority; or

(c) complying with a directive and assuming that the directive was valid when made and has not been revoked or terminated.

(2) A person acting as agent under [sections 1 through 20] is not subject to civil or criminal liability or discipline for unprofessional conduct for health care decisions made in good faith.

Section 20. Judicial review. (1) A health care provider, principal, agent, or other interested person may request judicial review of the validity of a directive.

(2) A health care provider, principal, or other interested person may request judicial review of a decision by the agent.

Section 21. Section 72-5-402, MCA, is amended to read:

"72-5-402. Contents of petition. (1) The petition must set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of that person's guardian, if any;

(d) the name and address of that person's nearest relative known to the petitioner;

(e) a general statement of that person's property with an estimate of the value of the property, including any compensation, insurance, pension, or allowance to which the person is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also must set forth the name and address of the person whose appointment is sought and the basis of the person's priority for appointment.

(3) *The petition must affirm that no mental health care advance directive exists or, if a directive exists, the directive must be attached to the petition.*"

Section 22. Repealer. The following section of the Montana Code Annotated is repealed:

53-21-153. Mental health advance directive authorized — content — cause of action created — definitions.

Section 23. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 through 20].

Approved May 6, 2011

CHAPTER NO. 330

[HB 525]

AN ACT PROVIDING FOR SYSTEMATIC REVIEW OF PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO DETERMINE IF THE BOARD REMAINS NECESSARY FOR A PUBLIC PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Review of licensing boards — termination. (1) (a) The interim committee responsible for monitoring professional and occupational licensing boards shall in each interim review one-half of the licensing boards to determine whether the boards remain necessary for a public purpose and meet the criteria in subsection (2). A board that does not meet the criteria may be referred to the next legislature to be terminated on June 30 following the legislative session.

(b) The review in the first interim after [the effective date of this act] must start with the oldest established boards. The review in the second interim after [the effective date of this act] must include the remaining boards. This review process must be repeated in the subsequent two interims.

(2) The criteria to be used to determine if a board meets a public purpose includes information describing whether:

(a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;

(b) the scope of practice is readily identifiable and distinguishable from the scope of practice of other professions and occupations;

(c) the occupation or profession requires a specialized skill or training for which nationally recognized standards of education and training exist;

(d) qualifications for licensure are justified;

(e) a public benefit is provided by licensure;

(f) licensure significantly increases the cost of service to the public; and

(g) public support exists for licensure.

(3) After a presentation and public comment during the review before the interim committee, the interim committee shall report to the legislature convening in the next odd-numbered year which boards, if any, fail to meet a majority of the criteria in subsection (2) and may recommend termination. The recommendation also must include information from the department of labor and industry regarding the board's ability to remain solvent or achieve fiscal solvency as provided in 37-1-101.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

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

Section 4. Termination. [This act] terminates December 31, 2018.

Approved May 5, 2011

CHAPTER NO. 331

[HB 530]

AN ACT ALLOWING ELECTION JUDGES TO BEGIN PREPARING ABSENTEE BALLOTS BEFORE ELECTION DAY; REQUIRING THE SECRETARY OF STATE TO ADOPT RULES GOVERNING SECURITY OF BALLOTS AND SECRECY OF VOTES; AND AMENDING SECTION 13-13-241, MCA.

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

Section 1. Section 13-13-241, MCA, is amended to read:

“13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots — rulemaking. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector or elector’s agent on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector’s voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector’s ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector’s identification or eligibility information was insufficient and that the elector’s ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the election administrator

shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.

(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107.

(8) (a) After receiving an absentee ballot secrecy envelope, ~~without opening the secrecy envelope but not sooner than 1 business day before election day,~~ the election judges ~~shall~~ *may, in the presence of a poll watcher, on election day open the secrecy envelope and place the secrecy envelope ballot in the proper, secured ballot box until tabulation occurs on election day.*

(b) *The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:*

(i) *the allowable distance from the observers to the judges and ballots;*

(ii) *the security in the observation area;*

(iii) *secrecy of votes during the preparation of the ballots; and*

(iv) *security of the secured ballot boxes in storage until tabulation procedures begin on election day."*

Section 2. Coordination instruction. If both House Bill No. 99 and [this act] are passed and approved, then the sections amending 13-13-241 are void and 13-13-241 must be amended as follows:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots — rulemaking. (1) (a) ~~After an absentee ballot is received~~ *Upon receipt of each absentee ballot signature envelope,* an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the ~~absentee ballot return envelope.~~

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector ~~by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state.~~ If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot *as provided in [section 7 of House Bill No. 99].*

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form *or if there is no signature on the absentee ballot return envelope*, the election administrator shall notify the elector, ~~either by first-class mail or the most expedient method available under rules adopted by the secretary of state,~~ and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(6) ~~The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.~~

(7) ~~If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107 as provided in [section 7 of House Bill No. 99].~~

(6) *If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in [section 7 of House Bill No. 99].*

~~(8)(7) (a) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box and if the validity of the ballot is confirmed pursuant to [section 7 of House Bill No. 99], then, no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day.~~

(b) *The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:*

(i) the allowable distance from the observers to the judges and ballots;

(ii) the security in the observation area;

(iii) secrecy of votes during the preparation of the ballots; and

(iv) security of the secured ballot boxes in storage until tabulation procedures begin on election day."

Approved May 5, 2011

CHAPTER NO. 332

[HB 533]

AN ACT GENERALLY REVISING STATE LAND MINE LEASING LAWS; CLARIFYING LIMITATIONS ON LEASING; CLARIFYING THE LEASING PROCEDURES FOR COAL MINING LEASES; ALLOWING THE BOARD OF LAND COMMISSIONERS THE DISCRETION IN DEMANDING A SURETY BOND; PROVIDING AN EXCEPTION TO THE DURATION OF A LEASE IF THE LEASE OR PERMIT IS CHALLENGED; DEFINING CERTAIN TERMS; ESTABLISHING TEMPORARY REPORTING REQUIREMENTS; CLARIFYING RENTAL TERMS; AMENDING SECTIONS 77-3-305, 77-3-312, 77-3-313, 77-3-314, AND 77-3-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature of the State of Montana recognizes the importance of the systematic and orderly development of coal mining operations and the need to ensure that fair market value is realized in the leasing of state coal reserves; and

WHEREAS, the Legislature desires to streamline the leasing process and to ensure that existing terms are construed in a manner consistent with original legislative intent.

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

Section 1. Section 77-3-305, MCA, is amended to read:

“77-3-305. Limitations on leasing. (1) The board shall *may* not issue leases:

(1) to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless ~~such~~ *that* country provides for similar or like privileges to citizens of the United States. ~~;~~ ~~or~~

(2) ~~if, after a determination of the amount, location, and quality of the coal on the lands for lease, The board shall consider whether the extraction of the coal from such those lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such those operations on such those lands in the future.”~~

Section 2. Section 77-3-312, MCA, is amended to read:

“77-3-312. Leasing procedures. (1) (a) Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on ~~such~~ *the* evaluation.

(b) (i) *The board may determine fair market value by competitive bid or through an appraisal.*

(ii) *If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).*

(2) ~~Leases shall~~ *Except as provided in subsection (1)(b), leases must be awarded by a competitive bid system, including a bonus bid for the first year’s rental that may be amortized for a period of up to 5 years at the discretion of the board, and no a lease shall may not be awarded at less than fair market value.”*

Section 3. Section 77-3-313, MCA, is amended to read:

“77-3-313. Bond requirements. The board shall *may* also demand a surety company bond in ~~such~~ *a* form and *in an* amount as it may determine,

conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; ~~but~~. *However*, a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit ~~hereinbefore provided for to such~~ *provided for under this part* in an amount ~~as will~~ *that* in the judgment of the board ~~make~~ *makes* the furnishing of a bond unnecessary.”

Section 4. Section 77-3-314, MCA, is amended to read:

“77-3-314. Duration of lease. (1) ~~(a) Coal~~ *Except as provided in subsection (1)(b)*, coal mining leases ~~shall~~ *must* be issued for a primary term of 10 years and ~~so for as~~ long thereafter as coal is produced from ~~such~~ lands in commercial quantities.

(b) If a lease under this part or a corresponding permit issued pursuant to Title 82, chapter 4, parts 1 and 2, is challenged before an administrative agency or in court, the primary term of the lease must be extended for the period of time that the lease or permit was subject to challenge.

(2) A lease not producing coal in commercial quantities at the end of the primary term ~~shall~~ *must* be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease ~~shall~~ *may* not be terminated so long as ~~said~~ *the* lands are covered and described under valid permit.

(3) For the purpose of this part;

(a) “commercial quantities” means that quantity of coal which that can be sold at profit in the commercial market;

(b) “covered and described” under a valid permit or “described” in a strip mine or mine-site location permit mean that the leased lands or a portion of the leased lands within or outside of the boundaries of the permit area are expected to be affected or disturbed at some point during the life of the permittee’s strip-mining or underground-mining operation and are identified in the permittee’s permit application.”

Section 5. Section 77-3-316, MCA, is amended to read:

“77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases ~~shall~~ *must* be upon a rental and royalty basis and ~~shall~~ *must* be fixed and determined by the board.

(2) The rental and royalty terms of each lease ~~shall~~ *must* be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental ~~shall~~ *may* be on a ~~per-acre~~ *per-acre* basis or *per-ton* basis but ~~in no case shall it~~ *the rental may not* be less than \$2 per acre.

(4) *(a) The amount of such the royalty shall must* be based upon:

(i) the kind, grade, and character of the coal in each particular mine;

(ii) upon the size, shape, and nature of the coal vein, strata, or body; and

(iii) upon the shipping and marketing facilities for the product.

(b) Consideration shall must also be given to every other known factor affecting the value of each particular coal mining lease; ~~but in no case shall~~ the royalty for the coal mined *may not* be less than 10% of the f.o.b. mine price of a ton prepared for shipment.”

Section 6. Reporting requirements. (1) On or before September 1, 2011, January 1, 2012, April 1, 2012, June 1, 2012, September 1, 2012, and January 1,

2013, the department of labor and industry shall report on the number of jobs that have been created in Montana as a result of passage of [this act] to:

- (a) the governor's office of economic development; and
- (b) the environmental quality council.

(2) If requested, the governor's office of economic development shall assist the department of labor and industry in preparing the report.

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Applicability. [This act] applies to coal mining leases in effect on [the effective date of this act] and to all coal mining leases entered into on or after [the effective date of this act].

Approved May 6, 2011

CHAPTER NO. 333

[HB 543]

AN ACT REVISING THE LAW RELATING TO THE ADOPTION OF MATERIAL BY REFERENCE IN ADMINISTRATIVE RULES BY AGENCIES SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if:

(a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient; *and*

(b) *it is reasonable for the agency to adopt the model code, rule, or other publication for the state of Montana.*

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) (a) *The model code, rule, or other publication to be adopted by an agency pursuant to subsection (1):*

(i) *must be in existence at the time that the agency's notice of proposed rulemaking is published in the register;*

(ii) *must be available to the public for comment, through either publication in the register or publication in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or other publication is itself subject to public comment; and*

(iii) *except as provided in subsection (3)(b), may not be altered between the time of publication of the notice of proposed rulemaking and the publication of the notice of adoption by the agency proposing the rule unless the alteration is required in order to respond to comments in the rulemaking record of the adopting agency.*

(b) *If the model code, rule, or other publication is altered by the agency between the time of the publication of the notice of proposed rulemaking and the notice of adoption, the part of the model code, rule, or other publication that is altered by the agency is not adopted unless that part is also subject to a separate process of adoption as provided in this section.*

(c) *If the model code, rule, or other publication is made available on the agency's website, the website may provide either the full text of the model code, rule, or other publication or a link to the source of the official electronic text of the model code, rule, or other publication.*

~~(3)~~(4) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not adopt any later amendments or editions of the material adopted. Except as provided in subsection ~~(5)~~ (6), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

~~(4)~~(5) If requested by a three-fourths vote of the appropriate administrative rule review committee, an agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

~~(5)~~(6) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed in the register. This notice must contain the information required by subsection (2) and must state the effective date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement page for the ARM is not required.

~~(6)~~(7) If a hearing is requested under subsection ~~(5)~~ (6), the petition for hearing must contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule.”

Section 2. Applicability. [This act] applies to rules proposed by an agency, as defined in 2-4-102, on or after October 1, 2011.

Approved May 6, 2011

CHAPTER NO. 334

[HB 559]

AN ACT PROVIDING THAT SMALL AND SEASONAL ESTABLISHMENTS SUCH AS GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES ARE SUBJECT TO VOLUNTARY GUIDELINES ADDRESSING BASIC HEALTH STANDARDS RATHER THAN REGULATIONS; CLARIFYING THE METHOD OF ESTABLISHING THE AVERAGE NUMBER OF GUESTS

PER DAY FOR SEASONAL AND SMALL ESTABLISHMENTS; CLARIFYING THAT LOCAL GOVERNMENTS MAY ADOPT ORDINANCES ADDRESSING BASIC HEALTH STANDARDS; AND AMENDING SECTIONS 50-51-101, 50-51-102, 50-51-103, 50-51-201, AND 50-51-401, MCA.

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

Section 1. Section 50-51-101, MCA, is amended to read:

“50-51-101. Findings and purpose of regulation or guidelines. (1) It is found that the *welfare of the public* ~~welfare requires control and regulation of is benefited by regulation or voluntary guidelines~~ for the operation of establishments providing lodging space accommodations and ~~the control, inspection, and regulation of~~ for persons providing accommodations in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found that the regulation of *or application of voluntary guidelines to* establishments providing lodging space accommodations is in the interest of social well-being and the health and safety of the state and all of its people.

(2) The legislature recognizes that there is a wide disparity in the type of establishments, especially in the size, the time of year at which the establishments operate, and the ability of small establishments with few employees and a limited operating season to conform to the same standards to which larger establishments are required to conform. These factors must be considered, especially in the operation of small or seasonal businesses that are such an important part of Montana’s tourism business. For these reasons, the legislature believes that department ~~rules~~ *actions* must be tailored to properly and reasonably address differences in the size, location, purpose, and time of year of operation of certain small or seasonal establishments. The legislature believes that ~~rules governing certain small or seasonal establishments must be limited to requirements meant to ensure~~ *guidelines to assist these small and seasonal establishments with addressing basic health standards are appropriate, rather than regulations. The guidelines should be voluntary and address basic health standards and should not detract from the rustic, out-of-doors experience offered by many guest ranches and outfitter and guide facilities and desired by many tourists. The legislature is also aware that most of these small and seasonal establishments such as guest ranches and outfitting and guide facilities have not been subject to department regulation. While voluntary guidance from the department on basic public health concerns may benefit these establishments, regulation is not warranted.*”

Section 2. Section 50-51-102, MCA, is amended to read:

“50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Bed and breakfast” means a private, owner- or manager-occupied residence that is used as a private residence but in which:

- (a) breakfast is served and is included in the charge for a guest room; and
- (b) the number of daily guests served does not exceed 18.

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Establishment” means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(4) “Guest ranch” means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides hunting, horseback riding, fishing, or a working cattle ranch experience to its guests; and

(d) is a small establishment or a seasonal establishment.

(5) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

(7) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(8) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(9) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment ~~operated~~ *was open for the purpose of accommodating guests* as a guest ranch or outfitting and guide facility during the year.

(10) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment ~~operated~~ *was open for the purpose of accommodating guests* as a guest ranch or outfitting and guide facility during the year.

(11) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(12) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 3. Section 50-51-103, MCA, is amended to read:

"50-51-103. Department authorized to adopt rules or guidelines. (1) The department may adopt rules governing the operation of bed and breakfasts,

hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a bed and breakfast, hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, fire and life safety, food service, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department ~~shall may not adopt rules governing guest ranches and outfitting and guide facilities that meet the definitions in 50-51-102 but may adopt rules voluntary guidelines for these facilities governing guest ranches and outfitting and guide facilities.~~ The ~~guidelines~~ rules must take into consideration the size, type, location, and seasonal operations of an establishment and may include only ~~rules~~ guidelines to:

(a) ~~ensure~~ address that the establishment has safe drinking water and an adequate water supply;

(b) ensure an adequate and sanitary sewage system and ensure adequate and sanitary refuse collection and disposal; *and*

(c) address food safety concerns, such as adequate storage, refrigeration, and food handling; *and*

~~(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.~~

~~(4) Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act. These guidelines must be developed through a negotiated process in cooperation with guest ranches and outfitters and guides. These guidelines are not intended to be regulatory in nature.~~

(5) The department shall develop guidelines for county sanitarians to ensure the uniform application of rules statewide. ~~The guidelines must be relative to each type of establishment provide assistance to guest ranches and outfitters and guides, and the guidelines must be tailored to the needs of each type of establishment.~~

~~(6) Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment.~~

~~(6) As provided in 7-1-113, nothing in this section prohibits a local government from adopting an ordinance that:~~

~~(a) is the same as or more stringent than rules adopted by the department under this section; or~~

~~(b) differs from the voluntary guidelines adopted by the department under this section."~~

Section 4. Section 50-51-201, MCA, is amended to read:

"50-51-201. License required. (1) Except as provided in subsection (2), a person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the department.

(2) A guest ranch or an outfitting and guide facility that ~~does not meet~~ *meets* the definitions in 50-51-102 ~~and that provides accommodations to fewer than nine people during each day of operation~~ is not required to obtain a license under subsection (1).

~~(3) Guest ranches and outfitting and guide facilities need not apply for a license pursuant to this chapter for the first time until the later of:~~

~~(a) the completion of negotiated rulemaking and public notification by the department of the necessity for those guest ranches or outfitting and guide facilities to obtain a license pursuant to this chapter; or~~

~~(b) July 1, 1998.~~

~~(4)(3) A separate license is required for each establishment. However, when more than one type of establishment is operated on the same premises and under the same management, only one license is required that must enumerate on the certificate the types of establishments licensed.~~

~~(5)(4) Before a license may be issued by the department, it must be validated by the local health officer or, if there is no local health officer, the sanitarian, in the county where the establishment is located.”~~

Section 5. Section 50-51-401, MCA, is amended to read:

“50-51-401. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed \$500.

~~(2) Penalties may not be assessed against a guest ranch or outfitter and guide facility unless the guest ranch or outfitting and guide facility receives a written notice of a violation and fails to correct the violation within 30 days.~~

~~(3)(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.”~~

Approved May 6, 2011

CHAPTER NO. 335

[HB 587]

AN ACT PROVIDING THE OPTION FOR AN ASSOCIATE WATER JUDGE; DEFINING THE DUTIES OF AN ASSOCIATE WATER JUDGE; GRANTING THE ASSOCIATE WATER JUDGE STATEWIDE JURISDICTION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-1001, 3-1-1010, 3-7-221, 3-7-222, 3-7-223, 3-7-224, AND 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 3-1-1001, MCA, is amended to read:

“3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221. The commission is composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively engaged or retired, who are appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18

through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to election by the chief justice of the supreme court. The election is considered an appointment for the purposes of this part.

(2) Appointments provided for in this section must be made within 30 days of the completion of the preceding terms.”

Section 2. Section 3-1-1010, MCA, is amended to read:

“3-1-1010. Lists submitted to governor and chief justice — report on proceedings. (1) If a supreme court justice, a district court judge, the workers’ compensation judge, *the associate water judge*, or the chief water judge gives notice of the judge’s resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice’s or judge’s proposed resignation date has been verified by the chief justice of the supreme court. If notice is not given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice, within the time period established under 3-1-1007, a list of not less than three or more than five nominees for appointment to the vacant position.

(2) The list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding each nominee, and the commission’s reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee.”

Section 3. Section 3-7-221, MCA, is amended to read:

“3-7-221. Appointment of chief water judge — term of office. (1) The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 10. *The chief justice of the Montana supreme court may appoint an associate water judge as provided in Title 3, chapter 1, part 10.*

(2) To be eligible for the office of chief water judge *or associate water judge*, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

(3) The term of office of the chief water judge *and the associate water judge* is ~~from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is~~ 4 years, subject to continuation of the water divisions by the legislature.”

Section 4. Section 3-7-222, MCA, is amended to read:

“3-7-222. Salary — office space. (1) The chief water judge *and the associate water judge* ~~is entitled to~~ *must* receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge *and the associate water judge* must be at the location ~~that~~ *designated by* the chief justice of the Montana supreme court ~~shall designate~~. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge *and the associate water judge*, ~~which money~~. Money may be appropriated by the legislature from the general fund *for these purposes*.”

Section 5. Duties of associate water judge. The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-223(1) and (2).

Section 6. Section 3-7-223, MCA, is amended to read:

“3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

(c) assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed;

(4) *assign the associate water judge to divisions and cases as needed;* and

~~(4)~~(5) request and secure the transfer of water judges between divisions as needed.”

Section 7. Section 3-7-224, MCA, is amended to read:

“3-7-224. Jurisdiction of chief water judge and associate water judge. (1) The chief water judge *and the associate water judge* may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge ~~has and the associate water judge have~~ jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

~~(3) With regard to the consideration of a matter within the chief water judge’s jurisdiction, the~~ *With regard to the consideration of a matter within the chief water judge’s jurisdiction, the chief water judge has and the associate water judge have* the same powers as a district court judge. The chief water judge *and the associate water judge* may issue orders, on the motion of an interested party or on the judge’s own motion, that may reasonably be required to allow the judge to fulfill the judge’s responsibilities, including, but not limited to, requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).”

Section 8. Section 19-5-301, MCA, is amended to read:

“19-5-301. Membership — inactive vested members — inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees’ retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge *or associate water judge* provided for in 3-7-221 must be members of the Montana judges’ retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member’s accumulated contributions is

an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 9. Appropriation. There is appropriated \$22,000 for each of the fiscal years 2012 and 2013 from the water adjudication account provided for in 85-2-280 to the Montana supreme court for expenses of the office of the associate and chief water judge.

Section 10. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of Title 3, chapter 7, part 2, apply to [section 5].

Section 11. Effective date. [This act] is effective July 1, 2011.

Approved May 5, 2011

CHAPTER NO. 336

[HB 607]

AN ACT REVISING THE PROCEDURE FOR THE SALE OF CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; ALLOWING AN APPLICANT WHO IS NOT SUCCESSFUL IN A DRAWING FOR A SPECIAL ELK PERMIT TO PURCHASE ONLY THE CLASS B-7 PORTION OF A CLASS B-10 LICENSE AS A CLASS B-11 LICENSE; REQUIRING THE RESALE OF THE REMAINING NONRESIDENT ELK TAG AS AN ELK-ONLY COMBINATION LICENSE; AMENDING SECTION 87-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-511, MCA, is amended to read:

~~**"87-2-511. (Temporary) Sale and use of Class B-10, Class B-11, and Class B-13 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).~~

~~(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:~~

~~(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;~~

~~(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and~~

~~(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.~~

~~(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.~~

~~(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:~~

~~(a) accompany the applicant;~~

~~(b) provide guiding services for the species hunted by the applicant;~~

~~(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;~~

~~(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and~~

~~(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.~~

~~(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.~~

~~(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.~~

~~(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.~~

~~(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.~~

~~(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.~~

~~(10) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application.~~

87-2-511. (Effective March 1, 2011) Sale and use of Class B-10, Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) *An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit*

may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee that is \$150 less than that set for a Class B-10 license in 87-2-505.

(b) The department may charge a \$25 processing fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(c) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

(6)(7) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application.”

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

Approved May 5, 2011

CHAPTER NO. 337

[HB 611]

AN ACT GENERALLY REVISING THE USE OF ACCOUNTS AND FUNDS; REVISING THE ADVANCING AGRICULTURAL EDUCATION IN MONTANA PROGRAM ACCOUNT; REVISING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT TO INCLUDE THE DEPARTMENT OF AGRICULTURE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-7-334 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-334, MCA, is amended to read:

“20-7-334. Advancing agricultural education in Montana program account. (1) There is an advancing agricultural education in Montana program account in the state special revenue fund provided for in 17-2-102.

(2) Money in the account *and money appropriated by the legislature for the purpose of this section* must be used by the office of public instruction for addressing the stability of and making improvements to Montana’s agricultural education programs. The office of public instruction shall adopt rules to implement the national quality program standards.

(3) (a) Each agricultural education program in the state that completes the national quality program standard evaluation as adopted by rule and submits a plan of improvement to the office of public instruction’s agricultural education specialist ~~must~~ *may* receive a ~~one-time~~ payment of \$500. *An agricultural education program may not receive more than one payment in a school year.*

(b) Each agricultural education program in the state that submits a detailed budget to increase the quality of its agricultural education program based on the plan of improvement may receive a ~~one-time~~ payment of up to \$1,000. *An*

agricultural education program may not receive more than one payment in a school year.

(c) Each school that adds agricultural education to its curriculum and recruits and retains an endorsed agricultural education teacher must receive a one-time payment of up to \$7,500.

(d) Program administrators in Bozeman and Helena must receive a total of \$11,250 annually for the costs of providing a minimum of one onsite visit each year to each participating school.”

Section 2. Section 90-3-1003, MCA, is amended to read:

“90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research, *development*, and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; ~~or~~

(d) *the Montana food and agricultural development program provided for in 80-11-901; or*

~~(b)~~(e) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% \$195,000 of the account funds ~~approved for research and commercialization projects~~ must be directed *distributed on an annual basis to the department of agriculture to support and administer the Montana food and agricultural development program provided for in 80-11-901 toward projects that enhance production agriculture.*

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project’s potential to diversify or add value to a traditional basic industry of the state’s economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in 69-3-2003(10) to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 9, 2011

CHAPTER NO. 338

[HB 615]

AN ACT REQUIRING THE INSURANCE COMMISSIONER TO STUDY EQUITABLE TREATMENT BY INSURERS FOR CANCER PATIENTS SEEKING TO PARTICIPATE IN CANCER CLINICAL TRIALS; REQUIRING THE INSURANCE COMMISSIONER TO COORDINATE WITH THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE; REQUIRING THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE TO REVIEW THE INSURANCE COMMISSIONER'S FINAL REPORT AND RECOMMEND APPROPRIATE LEGISLATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, there are hundreds of cancer patients in Montana who are eligible to participate in clinical trials that could be beneficial to them, as well as hasten major breakthroughs in cancer treatment; and

WHEREAS, the research companies cover all costs of the clinical trials, but not the routine care (e.g., chemotherapy, etc.) a patient would have received had they not been participating in a clinical trial; and

WHEREAS, cancer patients are not participating in these clinical trials because many insurance plans exclude routine care if a patient is accepted into a clinical trial; and

WHEREAS, insurance companies and self-funded plan administrators report they have difficulty defining routine care when an insured participates in a clinical trial; and

WHEREAS, limited information exists regarding this issue for consumers of health insurance to facilitate their making an informed choice.

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

Section 1. Commissioner review — cancer clinical trials. Pursuant to 33-1-311, the insurance commissioner shall study the appropriate and equitable treatment of cancer patients eligible for clinical trials by offerors of health insurance coverage in Montana. In carrying out the purposes of this section, the insurance commissioner shall:

(1) convene an advisory committee of representatives of insurance, reinsurance, and self-insurance offerors in Montana, as well as patients, health care advisors, providers, and administrators, that will meet to:

(a) evaluate the causes of the routine care coverage denials or ineligibilities for insureds recommended for participation in cancer clinical trials;

(b) identify necessary federal policy changes to address these issues for purchasers of ERISA-regulated health care plans;

(c) define routine care for cancer patients undergoing clinical trials; and

(d) make findings and recommendations to address issues associated with conclusions in this section;

(2) assess whether violations of Montana statutes are occurring related to this denial of care or ineligibility of coverage and take appropriate action if any are found;

(3) review a selection of other states' policies related to required treatment of cancer routine care coverage for insureds undergoing clinical trials; and

(4) coordinate with the children, families, health, and human services interim committee and summarize and present the findings and recommendations in the form of a final report of the insurance commissioner to the interim committee on or before March 31, 2012.

Section 2. Cancer clinical trials — review by interim committee. (1)

The children, families, health, and human services interim committee shall coordinate with the insurance commissioner regarding the requirements of [section 1] and dedicate at least a portion of one meeting during the 2011-2012 interim for consideration of the report prepared by the advisory committee pursuant to [section 1].

(2) The children, families, health, and human services interim committee shall consider whether legislation or other actions are necessary to facilitate equitable treatment of cancer patients in Montana and facilitate participation of Montana and Montana's citizens in cancer clinical trials.

Section 3. Consumer information — coverage of routine patient care for cancer patients participating in cancer clinical trials. A component of any health insurance plan comparative database or system developed by the insurance commissioner must include whether the plan covers routine cancer care if the patient participates in a cancer clinical trial.

Section 4. Termination. [This act] terminates June 30, 2013, or upon completion of the duties described in [sections 1 through 3], whichever occurs first.

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

Approved May 5, 2011

CHAPTER NO. 339

[HB 622]

AN ACT REVISING FUNDING FOR LIVESTOCK LOSS MITIGATION AND CONTROL OF PREDATORY ANIMALS; CREATING STATE SPECIAL REVENUE ACCOUNTS TO REIMBURSE PRODUCERS FOR LIVESTOCK LOSS AND TO PROTECT LIVESTOCK FROM PREDATORY ANIMALS; TRANSFERRING MONEY TO THE ACCOUNTS; CREATING STATUTORY APPROPRIATIONS TO THE DEPARTMENT OF LIVESTOCK SUBJECT TO A TERMINATION DATE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-3110, 2-15-3114, 15-1-122, 15-24-925, 17-7-502, 81-1-110, 81-7-103, AND 81-7-104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Livestock loss reduction and mitigation restricted account. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss reduction and mitigation restricted special revenue account. The account is administered by the department.

(2) Money is transferred to the account from the state general fund pursuant to 15-1-122 and is restricted to the purpose of making payments to livestock producers for confirmed and probable livestock losses pursuant to 2-15-3112(2). Money in the account may not be expended for administrative expenses.

(3) The livestock loss reduction and mitigation restricted account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of making payments to livestock producers as provided in subsection (2) of this section.

Section 2. Predatory animal state special revenue account. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the predatory animal special revenue account. The account is administered by the department.

(2) Money from per capita fees is transferred to the account pursuant to 15-24-925 for the purpose of protecting livestock in the state under the provisions of 81-7-101 through 81-7-104. The department is not required to spend all money allocated to this account by the end of each fiscal year.

(3) The predatory animal special revenue account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of protecting livestock as provided in subsection (2) of this section.

Section 3. Section 2-15-3110, MCA, is amended to read:

“2-15-3110. Livestock loss reduction and mitigation board — purpose, membership, and qualifications. (1) There is a livestock loss reduction and mitigation board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, and [section 1].”

Section 4. Section 2-15-3114, MCA, is amended to read:

“2-15-3114. Funding of programs — contingency. The awarding of grants and reimbursements and the performance of duties pursuant to 2-15-3111 through 2-15-3113 are contingent upon the amount of money available in the accounts provided for in 81-1-110, ~~and 81-1-111~~, *and [section 1].”*

Section 5. Section 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the

senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) *The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in [section 1] in each fiscal year.*

(3)(4) For the purposes of this section, “motor vehicle revenue deposited in the state general fund” means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(4)(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 6. Section 15-24-925, MCA, is amended to read:

“15-24-925. Reimbursement to department — transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis.

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock. Interest earned on money in the account must be deposited in the account.

(3) *The amount of \$350,000 is transferred from the state special revenue account in subsection (2) to the predatory animal special revenue account provided for in [section 2] in each fiscal year.*”

Section 7. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314;

10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; [section 1]; [section 2]; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 8. Section 81-1-110, MCA, is amended to read:

"81-1-110. Livestock loss reduction and mitigation accounts. (1)

There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those *transferred to the account provided for in [section 1]* or appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss reduction and mitigation board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113."

Section 9. Section 81-7-103, MCA, is amended to read:

“81-7-103. Administration of funds by department. *The Except as provided in [section 2(2)], the department shall administer and expend for predatory animal control all money that is made available to it, including the money allocated for this purpose under 81-7-104 and all money that is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department at those times of the year it considers advisable.”*

Section 10. Section 81-7-104, MCA, is amended to read:

“81-7-104. Predator control money — use of proceeds. (1) *The In addition to the transfer provided for in 15-24-925, the department shall allocate a portion of the money from the fee under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by predatory animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction and control, including systematic hunting and trapping and payment of bounties.*

(2) *Money may be paid out only on claims presented to the department and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures for predatory animal control by methods other than payment of bounties, as determined by the department. Money designated for predator control must be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction and control of predatory animals, as determined by the department and its advisory committee. Claims may not be approved in excess of money available for that purpose, and warrants may not be registered against the money.”*

Section 11. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 81, chapter 1, part 1, and the provisions of Title 81, chapter 1, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 81, chapter 7, part 1, and the provisions of Title 81, chapter 7, part 1, apply to [section 2].

Section 12. Effective date. [This act] is effective July 1, 2011.

Section 13. Termination. [Sections 1(3), 2(3), and 7] terminate June 30, 2017.

Approved May 5, 2011

CHAPTER NO. 340

[SB 11]

AN ACT REDUCING THE WITHHOLDING TAX RATE ON THE PROCEEDS FROM LOTTERY WINNINGS; AMENDING SECTION 15-30-2522, MCA; AND PROVIDING AN EFFECTIVE DATE .

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

Section 1. Section 15-30-2522, MCA, is amended to read:

“15-30-2522. Withholding of lottery winnings. (1) When making any payment of winnings that are subject to withholding, the state lottery commission, created under Title 23, chapter 7, part 2, shall deduct and withhold from the payment a tax in an amount equal to ~~10%~~ 6.9% of the payment.

(2) For the purposes of this section, the phrase “winnings that are subject to withholding” means the proceeds in excess of \$5,000 won from a lottery game operated pursuant to Title 23, chapter 7.

(3) Every person who receives a payment of winnings that are subject to withholding shall furnish the state lottery commission with a signed statement containing the name, address, and taxpayer identification number of the recipient and of every person entitled to any portion of the payment. The signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.”

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 341

[SB 126]

AN ACT REVISING THE LICENSING REQUIREMENTS AND FEES FOR FIRMS, NURSERIES, PLANT DEALERS, AND SMALL PLANT VENDORS THAT SELL OR DISTRIBUTE NURSERY STOCK; PROVIDING FOR RECIPROCAL LICENSURE; EXEMPTING CERTAIN FIRMS, NURSERIES, PLANT DEALERS, AND SMALL PLANT VENDORS FROM LICENSURE; IMPOSING A FEE FOR CERTAIN PLANT INSPECTIONS; REQUIRING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES; REQUIRING THE DEPARTMENT OF AGRICULTURE TO INCLUDE THE ACTUAL COSTS OF INSPECTION, SURVEYS, AND OTHER SERVICES IN THE FEE FOR CERTAIN PLANT INSPECTIONS; ESTABLISHING A MINIMUM AND MAXIMUM HOURLY FEE FOR INSPECTIONS; AMENDING SECTIONS 80-7-106 AND 80-7-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-7-106, MCA, is amended to read:

“80-7-106. License required — application and payment of license fee — exemption. (1) (a) ~~A~~ Except as provided in subsection (1)(b), a firm, nursery, ~~or~~ plant dealer, or small plant vendor engaging in the business of selling or distributing nursery stock in this state shall obtain a license from the department. If the firm, nursery, ~~or~~ plant dealer, or small plant vendor is required to be licensed and sells or distributes nursery stock at more than one location, the firm, nursery, or plant dealer shall obtain:

~~(a) one license if its combined annual gross sales are less than \$10,000; and~~

~~(b) a license for each location if its gross annual sales are \$10,000 or more,~~ the firm, nursery, plant dealer, or small plant vendor shall obtain a license for each taxpayer identification number the firm, nursery, plant dealer, or small plant vendor uses when selling or distributing nursery stock.

(b) A firm, nursery, plant dealer, or small plant vendor is not required to obtain a license in Montana if the firm, nursery, plant dealer, or small plant vendor:

(i) *is licensed as a nursery in another state and the state in which the firm, nursery, plant dealer, or small plant vendor is licensed grants nonresident licenses to residents of this state on the same basis; or*

(ii) *operates only in Montana and has less than \$1,000 in gross annual sales of nursery stock.*

(2) The license must be in the name of the firm, nursery, ~~or~~ plant dealer, or *small plant vendor* seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

~~(3) A small plant vendor must be licensed but is exempt from the license fee requirements of this section.~~

~~(4)(3) (a) A firm, nursery, or plant dealer, or small plant vendor that earns at least \$1,000 but less than \$1,000 \$5,000 in gross annual sales of nursery stock must be licensed but is exempt from licensing fees.~~

~~(b) A firm, nursery, or plant dealer that earns \$1,000 but less than \$3,000 in gross annual sales of nursery stock shall pay a license fee of \$50 \$25.~~

~~(c)(b) A firm, nursery, or plant dealer, or small plant vendor that earns \$3,000 but less than \$10,000 \$5,000 or more in gross annual sales of nursery stock shall pay a license fee of \$125 \$100.~~

~~(d) A firm, nursery, or plant dealer that earns \$10,000 or more in gross annual sales of nursery stock shall pay a license fee of \$160.~~

~~(5)(4) The department may seek verification from the department of revenue as to whether a firm, nursery, plant dealer, or small plant vendor has met the income thresholds established in this section have been met.~~

~~(6)(5) A new applicant or a firm, nursery, or plant dealer, or small plant vendor failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of \$25 for each license.~~

~~(7)(6) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party."~~

Section 2. Section 80-7-108, MCA, is amended to read:

"80-7-108. Nursery stock inspection — fees. (1) The department:

(a) may enter the premises of a licensed firm, nursery, ~~or~~ plant dealer, or ~~of a~~ small plant vendor during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. ~~An inspection fee may not be assessed if the department requests the inspection.; and~~

(b) shall, pursuant to rules promulgated by the department, determine the schedule, the need for inspections based on complaints received and the department's assessment of risk to the state from potential plant pests, and the expected amount of time for the inspections.

(2) A firm, nursery, plant dealer, or small plant vendor may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. ~~A firm, nursery, plant dealer, or small plant vendor requesting an inspection shall pay a fee as established by department rule. The fee firm, nursery, plant dealer, or small plant vendor shall pay a fee to~~

the department for an inspection conducted pursuant to this section. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate performed by the department and may not be less than \$42 per hour or more than \$50 per hour as established by department rule.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey.”

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

Approved May 6, 2011

CHAPTER NO. 342

[SB 132]

AN ACT PROVIDING THAT A LICENSED AUDIOLOGIST SELLING, DISPENSING, OR FITTING HEARING AIDS IS NOT SUBJECT TO LICENSURE AS A HEARING AID DISPENSER; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; AND AMENDING SECTIONS 37-15-102, 37-15-103, 37-16-103, 37-16-401, AND 37-16-405, MCA.

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

Section 1. Section 37-15-102, MCA, is amended to read:

“37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Association” means the Montana speech-language and hearing association.

(2) “Audiologist” means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “audiologist”, “audiology”, “audiometrist”, “audiometry”, “audiological”, “audiometrics”, “hearing clinician”, “hearing clinic”, “hearing therapist”, “hearing therapy”, “hearing center”, “hearing aid audiologist”, or any similar title or description of services.

(3) “Audiology aide or assistant” means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(4) “Board” means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

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

(6) “Practice of audiology” means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule *and includes the selling, dispensing, and fitting of hearing aids.*

(7) “Practice of speech-language pathology” means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(8) “Speech-language pathologist” means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language

pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “speech pathologist”, “speech pathology”, “speech correctionist”, “speech corrections”, “speech therapist”, “speech therapy”, “speech clinician”, “speech clinic”, “language pathologist”, “language pathology”, “voice therapist”, “voice therapy”, “voice pathologist”, “voice pathology”, “logopedist”, “logopedics”, “communicologist”, “communicology”, “aphasiologist”, “aphasiology”, “phoniatriest”, “language therapist”, “language clinician”, or any similar title or description of services or functions.

(9) “Speech-language pathology aide or assistant” means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.”

Section 2. Section 37-15-103, MCA, is amended to read:

“37-15-103. Exemptions — rulemaking. (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title “speech-language pathology or audiology intern”, “speech-language pathology or audiology trainee”, or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who holds a certificate of registration in this state as a hearing aid dealer from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) ~~(a) This chapter does not exempt an~~ An audiologist who sells, dispenses, or fits hearing aids *is exempt* from the licensing requirements or other provisions of Title 37, chapter 16, *except for the provisions of 37-16-304.*

(b) The board may adopt rules pertaining to the selling, dispensing, and fitting of hearing aids and hearing aid parts, attachments, and accessories."

Section 3. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. ~~(1)~~ This chapter does not apply to a person who is:

(1) a physician licensed to practice by the state board of medical examiners;:

~~(2) This chapter does not apply to a person while the person is engaged in the practice of fitting hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency; or~~

(3) licensed as an audiologist under the provisions of Title 37, chapter 15, except that the provisions of 37-16-304 apply to licensed audiologists."

Section 4. Section 37-16-401, MCA, is amended to read:

"37-16-401. License required — exception. *A Except as provided in 37-16-103, a person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise the selling, dispensing, or fitting of hearing aids in Montana unless the person holds a current license issued by the department."*

Section 5. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a training period during which the applicant shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing a written notice by certified mail to the board and the trainee.

~~(4) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the training period but is required to pass the examinations prescribed in this chapter.~~

~~(5)(4)~~ The trainee license terminates 1 year after issuance or after the trainee passes the practical examination, whichever occurs first.

~~(6)(5)~~ Upon completion of 1,000 hours of supervised training, the trainee is eligible to take the practical examination.

~~(7)(6)~~ A trainee who does not complete 1,000 hours of supervised training before the trainee license terminates may be issued a second trainee license upon making application and paying the appropriate fee. The hours of training obtained under the first trainee license must be carried forward.

~~(8)(7)~~ A trainee who fails the practical examination may continue to practice under direct supervision until the trainee license terminates. A second trainee license may not be issued. Termination of the trainee license and cessation of the authority to practice do not preclude a person from retaking the practical examination upon payment of the appropriate fees.

~~(9)(8)~~ Upon passing the practical examination, a trainee may submit an application for a hearing aid dispenser license with the appropriate fee and a hearing aid dispenser license must be issued.

~~(10)(9)~~ A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

~~(11)(10)~~ For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Approved May 5, 2011

CHAPTER NO. 343

[SB 153]

AN ACT REVISING THE APPOINTMENT OF COUNSEL IN CHILD ABUSE AND NEGLECT CASES; ALLOWING JUDGES DISCRETION IN APPOINTING COUNSEL FOR A CHILD OR YOUTH WHEN A GUARDIAN AD LITEM IS APPOINTED FOR THE CHILD OR YOUTH; AND AMENDING SECTION 41-3-425, MCA.

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

Section 1. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 *when a guardian ad litem is not appointed for the child or youth*; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint or have counsel assigned for:

(a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422;

(b) *any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.*

(4) The court's action pursuant to subsection (2) ~~or (3)~~ or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."

Approved May 6, 2011

CHAPTER NO. 344

[SB 187]

AN ACT GENERALLY REVISING THE MONTANA PUBLIC DEFENDER ACT AND RELATED STATUTES; RESTRICTING AND LIMITING CASELOAD LEVELS FOR THE CHIEF PUBLIC DEFENDER AND DEPUTY PUBLIC DEFENDERS; REQUIRING NOTARIZED AFFIDAVITS OF INDIGENCY; REVISING THE PROVISION FOR PAYMENT BY DEFENDANTS OF PUBLIC DEFENDER SERVICES; AMENDING SECTIONS 2-15-1028, 46-8-101, 46-8-113, 46-8-114, 47-1-102, 47-1-105, 47-1-111, 47-1-202, 47-1-205, 47-1-215, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of ~~11~~ 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

~~(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender; as follows:~~

~~(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;~~

~~(ii)~~ (ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

~~(iii) one attorney who represents criminal defense lawyers;~~

~~(iii) one attorney who represents criminal defense lawyers;~~

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

~~(d) one person who is a member of an organization that advocates on behalf of indigent persons;~~

~~(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;~~

~~(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and~~

~~(g) one person who is employed by an organization that provides addictive behavior counseling.~~

~~(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.~~

~~(d) one person who is a member of an organization that advocates on behalf of indigent persons;~~

~~(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;~~

~~(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and~~

~~(g) one person who is employed by an organization that provides addictive behavior counseling.~~

~~(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.~~

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) (a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

~~(a)(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire their own separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(b)(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(b) (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-18-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a

deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members.”

Section 2. Section 46-8-101, MCA, is amended to read:

“46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) *If Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.*

(3) *If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned.”*

Section 3. Section 46-8-113, MCA, is amended to read:

“46-8-113. Payment by defendant for assigned counsel — costs to be filed with court. (1) ~~As Subject to the provisions of subsections (2) and (3), as part of or as a condition under of a sentence that is imposed under the provisions of this title, the court shall require determine whether a convicted defendant to should pay the costs of counsel assigned to represent the defendant as follows; except as provided in subsections (2) and (3):~~

~~(a) in every misdemeanor case, \$150; and~~

~~(b) in every felony case, \$500.~~

~~(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201,~~

~~(a) If the defendant pleads guilty prior to trial:~~

~~(i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or~~

~~(ii) to one or more felony charges, the cost of counsel is \$800.~~

~~(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal proceeding trial. If the criminal proceeding includes a jury trial, counsel assigned by the The office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require the~~

defendant to pay the costs of counsel and other costs and expenses as reflected in the statement for the trial.

(2) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).

(3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform the defendant that purposely false or misleading statements by the defendant may result in criminal charges against the defendant.

~~(3)~~(4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay ~~them~~ the costs imposed by subsection (1). The court may find that the defendant is able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

~~(4)~~(5) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(6) Any costs imposed under this section must be included in the court's judgment."

Section 4. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~office of state public defender, provided for in 47-1-201,~~ clerk of the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251 and deposited in the account established in 47-1-110."

Section 5. Section 47-1-102, MCA, is amended to read:

"47-1-102. Purpose. The purposes of this chapter are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; ~~and~~

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner; *and*

(6) *ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay.*"

Section 6. Section 47-1-105, MCA, is amended to read:

“47-1-105. Commission — duties — report — rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to create permanent staff positions;

~~(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission or the chief public defender;

- (c) the number of deputy public defenders and the region supervised by each;
- (d) the number of public defenders employed or contracted with in the system, identified by region;
- (e) the number of attorney and nonattorney staff supervised by each deputy public defender;
- (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;
- (g) the total number of persons represented by the office, identified by region, court, and case type;
- (h) the annual caseload and workload of each public defender, identified by region, court, and case type, *except for the office of chief public defender*;
- (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;
- (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and
- (k) detailed expenditure data by court and case type.”

Section 7. Section 47-1-111, MCA, is amended to read:

“47-1-111. Eligibility — determination of indigence — rules. (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court’s order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court’s order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant who is eligible for a public defender ~~only~~ because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. *The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.*

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. *The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.*

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person’s unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant’s gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal

poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

Section 8. Section 47-1-202, MCA, is amended to read:

"47-1-202. Chief public defender — duties. (1) In addition to the duties provided in 47-1-201, the chief public defender shall:

~~(1) act as secretary to the commission and provide administrative staff support to the commission;~~

(a) act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);

~~(2)(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(3)(c) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;~~

~~(4) establish processes and procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;~~

~~(5)(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(6)(e) establish administrative management procedures for regional offices;~~

~~(7)(f) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case~~

complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(8)(g)~~ establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(9)(h)~~ establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(10)(i)~~ establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

~~(11)~~ maintain a minimum client caseload, as determined by the commission;

~~(12)(j)~~ actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

~~(13)(k)~~ perform all other duties assigned by the commission pursuant to this chapter.

(2) The chief public defender may not maintain a client caseload.”

Section 9. Section 47-1-205, MCA, is amended to read:

“47-1-205. Office of appellate defender — chief appellate defender.

(1) There is within the office an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(7)~~*(1)(f)* and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in 47-1-216 and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender.”

Section 10. Section 47-1-215, MCA, is amended to read:

“47-1-215. Regional offices — deputy public defenders — office space. (1) ~~Beginning July 1, 2006, the~~ *The* chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender’s assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(7)~~(1)(f);

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in 47-1-216 and authorized by the chief public defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region;

~~(h) maintain a minimum client caseload as determined by the chief public defender; and~~

(h) maintain a minimum client caseload as determined by the chief public defender; and

~~(i)~~*(i)* perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation.”

Section 11. Section 47-1-216, MCA, is amended to read:

“47-1-216. Contracted services — rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) The chief contract manager shall oversee the contracting program and may not maintain a client caseload.

~~(2)~~*(3)* ~~Beginning July 1, 2006, the~~ *The* state office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

~~(3)~~*(4)* Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

~~(4)~~(5) Contracting for public defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

~~(5)~~(6) The chief public defender and deputy public defenders shall provide for contract oversight and enforcement to ensure compliance with established standards.

~~(6)~~(7) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender services and for others contracted to provide nonattorney services.

(8) *Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.*

(9) *The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.*

(10) *The commission shall implement rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria.*

Section 12. Conflicts of interest. (1) The commission shall establish a conflicts office to contract for attorneys to represent indigent defendants in circumstances where, because of conflict of interest, the public defender program is unable to provide representation to a defendant.

(2) The commission shall appoint a conflicts manager to oversee the office. The conflicts manager reports directly to the commission and not to the chief public defender. The conflicts manager may not handle cases.

(3) All attorneys contracted for conflict of interest cases shall report to the conflicts manager.

Section 13. Codification instruction. [Section 12] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 12].

Section 14. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 345

[SB 215]

AN ACT PROVIDING FOR A REDUCTION IN THE DEPARTMENT OF REVENUE MARKUP ON LIQUOR SOLD BY THE STATE BASED UPON THE PERCENTAGE OF MONTANA-PRODUCED INGREDIENTS USED IN THE PRODUCTION OF THE LIQUOR; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. State liquor markup reduction — Montana-produced ingredients. (1) Based upon the percentage of Montana-produced ingredients that are used in producing a liquor, the department shall reduce the liquor markup charged by the department in determining the wholesale price of the liquor. To qualify for a reduced markup, the liquor must have been manufactured, distilled, rectified, bottled, or processed by a distillery that produces 25,000 proof gallons or less of liquor nationwide annually. The reduction in the markup must be determined as follows:

Percent of Montana-Produced Ingredients	Reduction in Markup
50% to 64%	50%
65% to 74%	75%
75% to 100%	100%

(2) For the purposes of this section, the liquor markup is the standard markup added to the department's base case price used in determining the wholesale price of liquor for products other than fortified wine or sacramental wine and does not include the reduced markup that results from the department's reduced prices for products designated for closeout or inventory reduction. The reduced markup must be applied to the standard liquor markup minus associated agency liquor store commissions and discount rate costs pursuant to 16-2-101 and costs of operating the central liquor warehouse and must be determined by the department on a yearly basis.

(3) (a) The percent of Montana-produced ingredients is determined as a percentage of the total applicable dry and wet weights of all the fermentable and flavor ingredients used in the production of the liquor as provided by rule adopted by the department.

(b) For the purposes of this section, a Montana-produced ingredient is an agricultural product, either processed or unprocessed, that in its unprocessed state was grown in Montana or, if it is a processed ingredient, that was processed in Montana from unprocessed agricultural products that were grown in Montana. Water is not an ingredient.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to [section 1].

Section 3. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2011

CHAPTER NO. 346

[SB 221]

AN ACT PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY WAIVE HEALTH MAINTENANCE ORGANIZATION REQUIREMENTS FOR ACCOUNTABLE CARE ORGANIZATIONS; EXPANDING RULEMAKING AUTHORITY OF THE COMMISSIONER OF INSURANCE; AND AMENDING SECTIONS 33-31-102, 33-31-201, AND 53-6-702, MCA.

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

Section 1. Section 33-31-102, MCA, is amended to read:

“33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *“Accountable care organization” means a group of health care providers that are willing and capable of accepting accountability for the total cost and quality of care for a defined population.*

(~~1~~)2) *“Affiliation period” means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.*

(~~2~~)3) *“Basic health care services” means:*

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children’s eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. “Medical foods” and “treatment” have the meanings provided for in 33-22-131.

(~~3~~)4) *“Commissioner” means the commissioner of insurance of the state of Montana.*

(~~4~~)5) *“Dependent” has the meaning provided in 33-22-140.*

(~~5~~)6) *“Enrollee” means a person:*

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~(6)~~(7) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

~~(7)~~(8) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~(8)~~(9) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

~~(9)~~(10) (a) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(b) The term does not apply to a PACE organization or an accountable care organization that has received a waiver pursuant to 33-31-201.

~~(10)~~(11) "Insurance producer" means an individual or business entity appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

~~(11)~~(12) "PACE organization" means an organization, as defined in 42 CFR 460.6, that is authorized by the centers for medicare and medicaid services and the department of public health and human services to operate a program of all-inclusive care for the elderly.

~~(12)~~(13) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~(13)~~(14) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

~~(14)~~(15) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

~~(15)~~(16) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(16)~~(17) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

~~(17)~~(18) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

~~(18)~~(19) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 2. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

- (a) be verified by an officer or authorized representative of the applicant;
- (b) be in a form prescribed by the commissioner;
- (c) contain:
 - (i) the applicant's name;
 - (ii) the location of the applicant's home office or principal office in the United States, if a foreign person;
 - (iii) the date of organization or incorporation;
 - (iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;
 - (v) the state or country of domicile; and
 - (vi) any additional information that the commissioner may reasonably require; and
- (d) set forth the following information or be accompanied by the following documents, as applicable:
 - (i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain, at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) *The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner determined by the commissioner.*

(ii) *The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.*

(b) *A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.*

(c) *The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.*

(d) *The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.*

(e) *The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated.”*

Section 3. Section 53-6-702, MCA, is amended to read:

“53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, or an accountable care organization, as defined in 33-31-102, that has received a waiver under 33-31-201.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

Section 4. Coordination instruction. If Senate Bill No. 351 and [this act] are passed and approved and if both contain a section that amends 53-6-702, the sections amending 53-6-702 are void and 53-6-702 must be amended as follows:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.

~~(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:~~

~~(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or~~

~~(ii) operates statewide or covers 20% or more of the medicaid population.~~

~~(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.~~

~~(4)(3) (a) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network an insurer regulated under Title 33 that:~~

~~(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or~~

~~(ii) operates statewide or covers 20% or more of the medicaid population.~~

~~(b) The term does not include:~~

(i) a provider of health care services under a contract with the department on a fee-for-service basis;

(ii) a medicaid primary care case management service within the meaning of 42 CFR 438; or

(iii) a PACE organization as defined in 42 CFR 460.6 or an accountable care organization as defined in 33-31-102 that has received a waiver under 33-31-201.

(5)(4) "Program" means an element of the integrated health care system created by this part."

Approved May 6, 2011

CHAPTER NO. 347

[SB 283]

AN ACT ALLOWING REAL PROPERTY TO BE MOVED FROM ONE COUNTY TO ANOTHER FOR REASONS OF PUBLIC SAFETY; REQUIRING A PETITION AND REQUIRING THAT THE PETITION CONTAIN CERTAIN INFORMATION; REQUIRING THE PETITIONERS TO MEET CERTAIN QUALIFICATIONS; REQUIRING BOARDS OF COUNTY COMMISSIONERS IN AFFECTED ADJOINING COUNTIES TO ENTER INTO AN INTERLOCAL AGREEMENT UPON RECEIPT OF A PETITION BEFORE AN ELECTION MAY BE HELD; REQUIRING THAT THE PROCESS CEASE IF THE ADJOINING COUNTIES ARE UNABLE TO AGREE ON BOUNDARIES; PROVIDING FOR A VOTE AND FORM OF BALLOT; PROVIDING FOR A PROCESS IF THE ELECTORS VOTE TO CHANGE THE BOUNDARIES; REQUIRING TRANSFER OF CERTIFIED COPIES OF INDEXES AND LAND RECORD ABSTRACTS AND PROVIDING FOR REIMBURSEMENT OF ASSOCIATED COSTS; ALLOWING A COUNTY TO WHICH PROPERTY IS TRANSFERRED TO LEVY A TAX; REQUIRING NOTIFICATION OF CERTAIN STATE AGENCIES; PROVIDING THAT SCHOOL DISTRICTS ARE NOT AFFECTED; AMENDING SECTIONS 7-2-103, 7-2-2201, 7-2-2202, 7-2-2411, 7-2-2412, 7-4-2631, 7-4-2632, 7-4-2637, AND 15-10-420, MCA.

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

Section 1. Alteration of county boundaries for public safety purposes — authorization — petition — definitions. (1) County boundaries may be altered for reasons of improving public safety as provided in [sections 1 through 9].

(2) (a) Before a petition to alter county boundaries as provided in [sections 1 through 9] may be circulated for signatures, a sample petition must be submitted to the county election administrator of the county in which the property is located for approval as to form. The person submitting the sample petition shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the proposed new county boundary.

(b) The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of [sections 1 through 9].

(c) The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundary.

(d) If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice of the

rejection to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 10 days after submission of the sample send written notice of the approval to the person who submitted the petition. After that notice, the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(3) Upon approval as to form, a petition to alter county boundaries for public safety purposes may be circulated for signatures.

(4) To be considered at an election, the petition must be signed by at least 25 or a majority of the qualified petitioners, whichever is less, and must be submitted within 120 days of the petition's approval as to form to the county clerks of the adjoining counties for which boundary changes are proposed requesting that the proposed boundary changes be submitted to the qualified electors of the adjoining counties.

(5) The petition must include:

(a) the names of the qualified petitioners and the legal description of the property owned by the qualified petitioner that is proposed to be transferred to an adjoining county;

(b) a general description of the property proposed to be moved from one county to another;

(c) a general description and legal description of the proposed boundary change;

(d) a map showing the proposed boundary change; and

(e) the reason, based on proximity to public safety services, for the proposed boundary change.

(6) For the purposes of [sections 1 through 9], the following definitions apply:

(a) "Public safety services" means law enforcement, firefighting, or emergency medical services.

(b) "Qualified petitioner" means an owner of real property in an area of a county that is proposed to become part of an adjoining county whose property may be reached more quickly by public safety services headquartered in the county seat of an adjoining county than by public safety services headquartered in the county seat of the county in which the owner's property is located.

Section 2. Affidavits to be attached to petition — verification of signatures. (1) There must be attached and filed with each sheet or section for a petition to alter county boundaries an affidavit of the person who circulated the petition, stating that it is the person's belief that:

(a) the petition is signed by at least 25 or a majority of the qualified petitioners, whichever is less;

(b) the signatures are genuine; and

(c) each person signing was, at the date of signing, a qualified petitioner.

(2) Upon receipt of the petition, the clerk of the county in which the qualified petitioners' property is located shall verify, using property records filed with the county and any other information that may be necessary, that the signatories are qualified petitioners.

(3) Within 30 days of receipt of the petition, the clerk shall:

(a) certify that the petition is sufficient under the provisions of subsection (2) and present the petition to the governing body at its next meeting; or

(b) reject the petition if it is insufficient under the provisions of subsection (2).

(4) The clerk shall notify the adjoining county where the proposed boundary change will occur of the clerk's action under subsection (3).

(5) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

Section 3. County commissioners to accept, amend, or reject petition — public hearing — interlocal agreement. (1) Upon receipt of a petition submitted as provided in [sections 1 and 2], the boards of county commissioners in the adjoining counties for which boundary changes are proposed shall, after providing public notice pursuant to 7-1-2121 in the county seat of each adjoining county, hold a public hearing in the area proposed to be moved from one county to another. After the public hearing, the boards of county commissioners shall either accept, reject, or amend the boundary changes as proposed in the petition.

(2) An interlocal agreement must be entered into by the adjoining counties and must state:

(a) the proposed boundary change as accepted or amended by the boards, including the legal description of the proposed boundary change;

(b) the procedure each board intends to follow in complying with [sections 1 through 9];

(c) subject to subsection (4), the costs to be incurred by each county in complying with [section 7]; and

(d) any other elements to which the boards agree regarding provision of services or county operations upon the relocation of the boundary.

(3) If the boards of county commissioners do not agree on the proposed boundary changes, either as presented in the petition or as amended, or if one or both boards reject the proposal, the process for changing the boundaries must cease and may not be initiated again for a period of 1 year.

(4) The adjoining counties shall negotiate the fees to be charged for compliance with [section 7], and the provisions of 7-2-2412, 7-4-2631, 7-4-2632, and 7-4-2637 regarding fees charged by county clerks do not apply to the processes required in [section 7].

Section 4. Order for election — registered electors entitled to vote.

(1) Upon execution of an interlocal agreement under [section 3(2)], the boards of county commissioners in the adjoining counties for which boundary changes are proposed shall, after providing public notice pursuant to 7-1-2121 in the county seat of each adjoining county, hold a public hearing in the area proposed to be moved from one county to another in order to accept comment on the proposed cost of compliance with [section 7] as stated in the interlocal agreement pursuant to [section 3(2)]. After the public hearing, the boards of county commissioners shall order and give notice of an election to be held for the purpose of determining whether or not to change the boundaries of the adjoining counties. The order may not be made less than 75 days before the election is to be held.

(2) The question of determining whether or not to change the boundaries of the adjoining counties must be included on the ballot for the next regular election scheduled not less than 75 days after the date of the order and the notice.

(3) All registered electors of the adjoining counties are entitled to vote at the election.

(4) The notice must require that the ballot contain the legal description of the proposed boundary change, together with any descriptive name or names for the property that may be in common use.

(5) The election must be conducted in conformance with the provisions of Title 13 unless otherwise provided for in [sections 4 through 6].

Section 5. Form of ballot. (1) The ballot containing the question of whether or not to change the boundaries of adjoining counties must include the legal description of the proposed boundary change, together with any descriptive name or names for the property that may be in common use.

(2) The question must be in a form similar to the following:

FOR changing the boundary between (County) and (County) by moving the boundary and the property described from (County) to (County).

AGAINST changing the boundary between (County) and (County) by moving the boundary and the property described from (County) to (County).

(3) The language on the ballot must be the same in each adjoining county in which the election is held.

Section 6. Effect of election — resolution by boards of county commissioners. If, upon the canvass of votes cast at the election, more than 50% of the votes cast in each adjoining county approve the proposed boundary change, then the boards of county commissioners in the adjoining counties shall, by resolution, declare the boundary to be changed as of January 1 of the year that begins at least 13 months after the date the election is held and shall direct the transfer of all certified copies of property records and other records to the appropriate county to be completed by the date the boundary change becomes effective. The resolution must include the legal description of the new boundaries of each county.

Section 7. Transfer of certified copies — costs to be reimbursed — tax levy authorized. (1) Upon a resolution adopted as provided in [section 6], the county clerk in the county from which property will be transferred shall prepare certified copies of the indexes to recorded documents maintained by the county clerk pursuant to 7-4-2619.

(2) (a) The clerk shall contract with a land title company that maintains a geographical tract index of the recorded documents in the county to prepare an abstract of the property to be transferred. The abstract must include deeds, mortgages, assignments of mortgages, leases, mining claims, and any other documents recorded from the date that the county was created to the date of the boundary change implementation as provided in [section 6].

(b) The land title company with which the clerk contracts must be a member in good standing of the Montana land title association.

(3) The clerk shall certify each copy of the recorded documents included in the abstract and shall transfer all copies of indexes and recorded documents certified pursuant to this section to the county clerk of the county to which the property will be transferred. The clerk of the county to which the property will be transferred shall record the documents pursuant to 7-4-2617 and shall maintain an index of the documents pursuant to 7-4-2619.

(4) Actual or customary costs incurred by a county in complying with subsections (1) through (3) must be reimbursed to the county from which certified copies are transferred. Subject to 15-10-420, the county to which records are transferred may levy a property tax against the property that has

been transferred in the amount necessary to reimburse the county that incurred the costs. The property tax levied as provided in this subsection may be collected over a period of up to 5 years.

Section 8. Notification of boundary change — certification of taxable value — indebtedness. (1) Upon implementation of a boundary change under [sections 1 through 9], the county clerk and recorders in the adjoining counties where the boundary was changed shall notify the department of administration, the department of revenue, and the secretary of state of the boundary change.

(2) The department of revenue shall certify to each adjoining county the total taxable value within each county for the year following implementation of the boundary change accounting for the transfer of the property.

(3) The provisions of 7-2-102 apply to a boundary change implemented as provided in [sections 1 through 9].

Section 9. Effect on school districts. Relocation of property from one county to another under [sections 1 through 9] does not affect school district boundaries, the operation of a school district, or the county in which the district was located before the boundary was changed.

Section 10. Section 7-2-103, MCA, is amended to read:

“7-2-103. Collection of taxes upon alteration of boundary of local government. Subject to the provisions of part 27 of this chapter *and [section 9]*, if any territory is detached from any county, city, or town and is annexed to any other county, city, or town ~~therein~~, it does not invalidate or interfere with the collection of taxes in ~~such the~~ territory and the taxes ~~shall must~~ be collected by and the returns made to the county to which the territory is attached in the manner provided by law for levying and collecting taxes.”

Section 11. Section 7-2-2201, MCA, is amended to read:

“7-2-2201. Authorization to create new counties. (1) New counties may, ~~from time to time~~, be formed and created in this state from portions of one or more counties ~~which shall that must~~ have been created and in existence for a period of more than 2 years, in the manner ~~set forth and~~ provided in this part.

(2) *A Except as provided in [sections 1 through 9], a county enlarged by the addition of territory taken from one or more other counties is a new county under the provisions of this part.”*

Section 12. Section 7-2-2202, MCA, is amended to read:

“7-2-2202. Limitations on creation of new counties. (1) ~~No~~ A new county ~~shall may not~~ be established ~~which shall reduce that reduces~~ any county to an assessed valuation of less than \$12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) ~~No~~ A new county ~~shall may not~~ be formed ~~which that~~ contains an assessed valuation of property less than \$10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which ~~such the~~ new county is to be established.

(3) ~~No~~ A new county ~~shall may not~~ be established ~~which shall reduce that reduces~~ the area of any existing county from which territory is taken to form ~~such the~~ new county to less than 500 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) ~~No~~ *Except as provided in [sections 1 through 9], territory shall may not* be taken from one county and added to another county unless its surveyed area is greater than 49 square miles.

(5) ~~No~~ A new county ~~shall~~ *may not* be formed ~~which~~ *that* contains less than 250 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement.”

Section 13. Section 7-2-2411, MCA, is amended to read:

“7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county *or where the county boundary has been changed as provided in [section 1 through 9]* and wherever there has been an action or proceeding begun affecting any real property situated within the new county *or the county to which property has been added under [sections 1 through 9]*, whether the action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in the real property affected by the action or proceeding requesting the transfer of the files and papers and records of the action or proceeding to the office of the clerk of the district court of the ~~new county in~~ *to* which the real property is ~~situated~~ *added*, ~~it is the duty of the judge of the district court in which the action or proceeding was originally begun~~ *to shall* order that a transfer of all the files and papers of the action or proceeding be made to the office of the clerk of the district court of the ~~new county in~~ *to* which the real property is ~~situated~~ *added*. When an order of transfer is made, ~~it is the duty of the clerk of the district court in which the action or proceeding was originally instituted~~ *to shall* transmit all of the files and papers in the action or proceeding, together with a certified copy of all minutes of the court relating to the action or proceeding, to the clerk of the ~~new county in~~ *to* which the real property, the subject matter of the action or proceeding, is ~~situated~~ *added*.

(2) The clerk of the district court of the ~~new county in~~ which the property is ~~situated~~ *added* shall, upon the receipt of the files and papers and certified copies of the minutes of the court, file the papers in the clerk’s office as transferred files from the original county and shall enter and transcribe upon the clerk’s records any final judgment or decree or order contained in the files or papers or records transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a ~~new county in~~ accordance with the provisions of this section, the district court of the ~~new county in~~ which the files and papers have been transferred has the same jurisdiction with reference to the real property for the enforcement of any decree, judgment, or order that may have been entered or for other proceedings that may be necessary in the action or proceeding as the district court had in the county in which the action or proceeding was originally begun.”

Section 14. Section 7-2-2412, MCA, is amended to read:

“7-2-2412. Fees for transfer of court records. (1) ~~The~~ *Except as provided in [section 3(4)],* the clerk of the district court in which an action or proceeding was originally begun is entitled to receive, for transferring the files, papers, and certified copies of the minutes and records entered in connection with the action or proceeding, only a fee at the rate of 20 cents per folio for copies of minutes and 50 cents for a certificate fee.

(2) The clerk of the district court of the ~~new county to~~ which files and papers may be transferred in accordance with the provisions of 7-2-2411 is not entitled to any fees for the filing of the transferred records, but for the filing of any papers that may be filed after the transfer in connection with an action or proceeding or for the issuance of any writs or other papers, the clerk is entitled to charge the same fees as provided by law.”

Section 15. Section 7-4-2631, MCA, is amended to read:

“7-4-2631. Fees of county clerk. (1) Except as provided in [section 3(4)], 7-4-2632, and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, \$6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, \$3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$5;

(d) for filing of subdivision and townsite plats, \$5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, \$5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, \$2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;

(m) for each certified copy of a birth certificate, \$5, and for each certified copy of a death certificate, \$3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.”

Section 16. Section 7-4-2632, MCA, is amended to read:

“7-4-2632. Fee when recording done by mechanical means. Whenever recording is done by a photographic or similar process, the county clerk and recorder shall charge \$7 for each page or fraction of a page of the instrument for recording.”

Section 17. Section 7-4-2637, MCA, is amended to read:

“7-4-2637. Fees for recording standard documents. (1) Except as provided in *[section 3(4)]*, 7-4-2631, and subsection (2) of this section, the fee for recording a standard document that meets the requirements of 7-4-2636 is \$7 for each page or fraction of a page.

(2) ~~The~~ *Except as provided in [section 3(4)]*, the fee for recording a document that does not meet the requirements of 7-4-2636 is \$11 for each page or fraction of a page for the first five pages or fractions of the pages and \$7 for each subsequent page.

(3) (a) Of the fees collected under subsection (1):

(i) \$1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 25 cents must be deposited in the county land information account provided for in 7-6-2230;

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit in the Montana land information account created in 90-1-409; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) Of the fees collected under subsection (2) for nonstandard documents, each \$7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining \$4 of each \$11 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each \$4 amount from an \$11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.”

Section 18. 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)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) 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) a mill levy imposed for a newly created regional resource authority.

(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 15-10-108, 20-9-331, 20-9-333, 20-9-360, 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 tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a 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;

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

(v) a levy for the support of a newly established regional resource authority;
~~or~~

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; *or*

(vii) *a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under [section 7] upon relocation of a county boundary.*

(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 19. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 7, chapter 2, and the provisions of Title 7, chapter 2, apply to [sections 1 through 9].

Approved May 5, 2011

CHAPTER NO. 348

[SB 294]

AN ACT PROVIDING FOR FUNDING OF ENTRY-LEVEL EMPLOYEES UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT BY REQUIRING THAT TO BE ELIGIBLE FOR FUNDING, NEW JOBS CREATED MUST PROVIDE AN AVERAGE WEEKLY WAGE THAT MEETS OR EXCEEDS THE LESSER OF 170% OF MONTANA'S CURRENT MINIMUM WAGE OR THE CURRENT AVERAGE WEEKLY WAGE OF THE COUNTY IN WHICH THE EMPLOYEES ARE TO BE PRINCIPALLY EMPLOYED; PROVIDING ALTERNATE CRITERIA FOR WAGES FOR NEW JOBS; AMENDING SECTIONS 39-11-103 AND 39-11-202, MCA; REPEALING SECTION 39-11-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-11-103, MCA, is amended to read:

"39-11-103. Definitions. As used in this chapter, the following definitions apply:

(1) ~~"Average weekly wage" has the meaning provided in 39-71-116.~~

(1) "Average weekly wage" has the meaning provided in 39-71-116.

~~(2)~~(2) "Department" means the department of commerce established in 2-15-1801.

~~(3)~~(3) "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(4)~~(4) “Eligible training provider list” means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(5)~~(5) “Employee” means the individual employed in a new job.

~~(6)~~(6) “Employer” means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(7)~~(7) “Full-time job” means a predominantly year-round position requiring an average of 35 hours of work each week.

~~(8)~~(8) (a) “New job” means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(9)~~ “Part-time job” means a predominantly year-round position requiring an average of 25 to 34 hours of work each week.

~~(9)~~(10) “Primary sector business” means an employer engaged in establishing or expanding operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and:

(a) for which at least 50% of the sales of the employer occur outside of Montana;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; or

(c) the employer is a new business that provides, as determined by the ~~committee provided for in 39-11-201~~ department, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.

~~(10)~~(11) “Primary sector business training program” or “program” means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(11)~~(12) (a) “Program costs” means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of equipment to be owned or used by the eligible training provider.

(12)(13) "Program services" means training and education specifically directed to the new jobs, including:

- (a) all direct training costs, such as:
 - (i) program promotion;
 - (ii) instructor wages, per diem, and travel;
 - (iii) curriculum development and training materials;
 - (iv) lease of training equipment and training space;
 - (v) miscellaneous direct training costs;
 - (vi) administrative costs; and
 - (vii) assessment and testing;
- (b) in-house or on-the-job training; and
- (c) subcontracted services with eligible training providers."

Section 2. Section 39-11-202, MCA, is amended to read:

"39-11-202. Primary sector business workforce training grants — eligibility. (1) Subject to appropriation by the legislature, the ~~grant review committee provided for in 39-11-201~~ *department* may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

- (a) be a value-adding business as defined by the Montana board of investments;
- (b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;
- (c) provide a service or function that is essential to the locality or the state; or
- (d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

- (a) must be from new, unexpended funds available at the time of application;
- (b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The ~~committee~~ *department* may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the ~~committee~~ *department*.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position *and \$2,500 for each part-time position* for which an employee is being trained. ~~A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly wage or the current average weekly wage of the county in which the employees are to be principally employed. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum~~

wage or the current average weekly wage of the county in which the employees are to be principally employed, provided minimum wage requirements are met.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The ~~committee~~ *department* may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay ~~significantly higher~~ *high* wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the ~~committee~~ *department* to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the ~~committee~~ *department* may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the ~~committee~~ *department* determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the ~~committee~~, ~~the committee~~ *department*, ~~the department~~ may award a primary sector business workforce

development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) *The department shall provide employers assistance in accessing workforce and education services outside the scope of this chapter for which employees may be eligible. These additional services may not be used to replace a grant provided under this section once the contract has been finalized.*

(8)(9) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

39-11-201. Grant review committee — appointment — powers and duties — rulemaking authority.

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 349

[SB 326]

AN ACT CREATING THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM WITH MONEY FROM THE PERMANENT COAL TAX TRUST FUND TO BE ADMINISTERED BY THE BOARD OF HOUSING; AMENDING SECTIONS 17-6-201 AND 17-6-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature finds that members of the Montana National Guard, residents of Montana in the federal reserves, and Montana residents serving on active duty in the armed forces have all made sacrifices of various kinds in order to serve the state and their country in times of war or national emergency; and

WHEREAS, the Legislature further finds that while those sacrifices may be difficult to quantify or compare because they range from loss of time with family and friends due to demands of reserve duty to loss of life in the service of the country, those sacrifices have in common that they occurred because of the status of the individual as a member of the armed forces; and

WHEREAS, the Legislature further finds that it has the authority pursuant to Article II, section 35, of the Montana Constitution to recognize and reward this status by providing special consideration to the status of service members and veterans; and

WHEREAS, the Legislature finds that it is appropriate to reward this status and the sacrifices the status represents by facilitating the fulfillment of the

American dream of home ownership for those who serve or have served in the American armed forces; and

WHEREAS, the purpose of the Montana Veterans' Home Loan Mortgage Program Act is not to provide the most substantial return on the investment of money in the coal tax trust fund used for the program but to use some of the money in the trust fund for a mortgage loan program so that first-time home buyers who are eligible veterans can acquire a mortgage loan at a rate lower than prevailing market rates and in this way reward those eligible veterans who have served this country well and reward the unremarried spouses of eligible veterans who have made the ultimate sacrifice in service to their country.

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

Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Veterans' Home Loan Mortgage Program Act".

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

- (1) "Board" means the board of housing provided for in section 2-15-1814.
- (2) "Coal tax trust fund" or "trust fund" means the trust fund created pursuant to Article IX, section 5, of the Montana constitution.
- (3) "Eligible veteran" means an individual who is a Montana resident and who:
 - (a) is or has been a member of the Montana national guard;
 - (b) is or has been a member of the federal reserve forces of the armed forces of the United States, serving pursuant to Title 10 of the United States Code;
 - (c) is serving or has served on federal active duty pursuant to Title 10 of the United States Code;
 - (d) is an unremarried spouse of an individual who was otherwise an eligible veteran and was killed in the line of duty;
 - (e) is an eligible veteran as defined by the board pursuant to [section 6(2)]; or
 - (f) if previously a member of the armed forces, was discharged under honorable conditions.
- (4) "First-time home buyer" means an individual determined by the board to be a first-time home buyer pursuant to rules adopted by the board.
- (5) "Mortgage loan" means a loan for the purchase of real property with any improvements located within this state that is to be used for residential purposes and that is based upon a written instrument approved by a federal agency and that is written in the form of a trust indenture.
- (6) "Participating financial institution" means a corporate lender or other loan originator approved by the board for originating and servicing loans pursuant to [sections 1 through 5].
- (7) "Resident" means an individual who maintains a permanent place of abode within Montana and who has not established a residence elsewhere even though the individual may be temporarily absent from the state.
- (8) "Trust indenture" has the meaning provided in 71-1-303.
- (9) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharge and general discharge.
 - (b) The term does not include a dishonorable discharge or another administrative discharge characterized by military regulation as other than honorable.

(10) “Veterans’ home loan mortgage program” or “program” means the program created in [section 3].

Section 3. Veterans’ home loan mortgage program created — use of coal tax trust fund money. (1) There is a Montana veterans’ home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of investments shall allow the board to administer \$15 million of the permanent coal tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to [sections 1 through 5], the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to [sections 1 through 5] is repaid, the principal payments on the loan must be deposited in the trust fund until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with [section 5], to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited into the trust fund.

(3) Interest on a home mortgage loan made pursuant to [sections 1 through 5] must be charged at 1% less than the federal national mortgage association’s delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association’s rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran.

Section 4. Additional terms of program. (1) The maximum amount of a loan made by the board pursuant to [sections 1 through 5] is 95% of the value of the statewide allowable purchase price determined by the board pursuant to [section 5].

(2) The board shall require as a condition for a loan that an eligible veteran participate in a first-time home buyer education program approved by the board.

(3) A loan made by the board must be secured by a government guaranty pursuant to rules adopted by the board unless the board determines pursuant to [section 5(2)] to allow the use of conventional mortgage insurance requirements and coverage.

(4) An eligible veteran must participate in a loan by contributing a minimum amount of \$2,500 unless the board determines otherwise pursuant to [section 5(2)].

(5) There is no limit on the maximum amount of income that may be earned by an eligible veteran for the purposes of a loan pursuant to [sections 1 through 5].

(6) In order to allow small financial institutions to participate equitably in the program along with large financial institutions, the board shall adopt rules pursuant to [section 5] to specify the maximum amount of mortgage loans that may be made by any one participating financial institution.

(7) The legislative auditor must be allowed access to all documentation used for the purpose of the program.

(8) A report describing at least the operation and use of the program must be made by the board to the legislature as provided in 5-11-210. The report may be

combined with other reports by the board or the department of commerce to the legislature.

Section 5. Rules to be adopted by board. (1) The board shall adopt rules pursuant to the Montana Administrative Procedure Act necessary for administration of the program, including rules:

(a) specifying what financial institutions may be participating financial institutions;

(b) specifying underwriting criteria for a program loan, such as minimum down payment, credit score, ratios of housing expense and of all reoccurring debt as a percentage of income of the borrower, and exceptions to those criteria;

(c) specifying the statewide allowable purchase price of a home for the purposes of the program;

(d) specifying the security required for a mortgage loan financed by the program;

(e) providing the legislative auditor with access to records of participating financial institutions regarding loans made pursuant to [sections 1 through 5];

(f) governing the loan application process;

(g) specifying the maximum servicing fees and origination fee that may be charged by a participating financial institution; and

(h) other loan conditions determined to be necessary by the board.

(2) The board may adopt rules pursuant to the Montana Administrative Procedure Act changing any of the following provisions if the board determines a change is necessary to carry out the purposes of the program:

(a) the definition of eligible veteran in [section 2];

(b) the security for a loan provided in [section 4]; and

(c) the requirements for minimum participation for the eligible veteran provided for in [section 4].

Section 6. Section 17-6-201, MCA, is amended to read:

“17-6-201. Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. “Private corporate capital stock” means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(e) This section does not prevent investment in home loan mortgages under the provisions of the Montana veterans' home loan mortgage program provided for in [sections 1 through 5].

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund, other than the fund derived from land granted to the state 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 329. An appropriation to pay the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in subsections (2) through (4) (5) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans.

Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer \$15 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in [sections 1 through 5].

~~(5)~~(6) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

~~(6)~~(7) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

Section 8. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 5].

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 350

[SB 331]

AN ACT GENERALLY REVISING SURPLUS LINES INSURANCE LAW; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ENTER INTO COOPERATIVE OR RECIPROCAL AGREEMENTS WITH OTHER STATES OR A CLEARINGHOUSE FOR THE PURPOSE OF COLLECTING,

ALLOCATING, AND DISBURSING PREMIUM TAXES AND FEES ATTRIBUTABLE TO MULTISTATE RISKS; REVISING DEFINITIONS; DEFINING "EXEMPT COMMERCIAL PURCHASER" AND "QUALIFIED RISK MANAGER"; PROVIDING EXCLUSIVE REGULATORY AND TAXING AUTHORITY TO THE HOME STATE OF THE INSURED; EXEMPTING SURPLUS LINES INSURANCE PRODUCERS FROM DILIGENT SEARCH REQUIREMENTS UNDER CERTAIN CIRCUMSTANCES; SPECIFYING CERTAIN LICENSING REQUIREMENTS; REVISING REQUIREMENTS PERTAINING TO UNAUTHORIZED INSURERS; ESTABLISHING REPORTING REQUIREMENTS; ESTABLISHING A TAX RATE ON SURPLUS LINES PREMIUMS; EXPANDING THE COMMISSIONER'S RULEMAKING AUTHORITY; REVISING EXEMPTIONS TO BE CONSISTENT WITH THE EXCLUSIVE REGULATORY JURISDICTION OF THE HOME STATE OF THE INSURED; ESTABLISHING THE FUNCTIONS OF THE SURPLUS LINES INSURANCE ADVISORY ORGANIZATION; AMENDING SECTIONS 2-9-211, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-307, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-317, AND 33-2-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 2-9-211, MCA, is amended to read:

"2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(1)(b)~~(2)(a)(ii) through ~~(1)(d)~~(2)(a)(iv). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(1)(b)~~(2)(a)(ii) through ~~(1)(d)~~(2)(a)(iv) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by

2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.”

Section 2. Section 33-2-301, MCA, is amended to read:

“33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as “The Surplus Lines Insurance Law”.

(2) The purpose of this part is to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) *“Affiliated” means that a person directly or indirectly controls, is controlled by, or is under common control with the insured.*

(b) *“Affiliated group” means any group of persons that are affiliated.*

(c) *“Approved risk list” means the list approved by the commissioner of the kinds of insurance presumed unobtainable from authorized insurers when Montana is the home state of the insured.*

~~(a)~~(d) *“Authorized insurer” means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.*

~~(b)~~(e) (i) *“Business entity” means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.*

(ii) The term does not include an individual.

(f) *“Control”, including the terms “controlled by” and “under common control with”, means that:*

(i) *the person directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25% or more of any class of voting securities of a business entity; or*

(ii) *the person controls in any manner the election of a majority of the directors or trustees of a business entity.*

~~(e)~~(g) *“Eligible surplus lines insurer” means an unauthorized insurer with which a surplus lines insurance producer may place that is eligible to issue surplus lines insurance under 33-2-307.*

(h) *“Exempt commercial purchaser” has the meaning provided in [section 3].*

~~(d)~~(i) *“Export” means to place surplus lines insurance with an unauthorized insurer.*

(j) *“Home state” means, with respect to an insured:*

(i) *the state in which the insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence;*

(ii) if 100% of the insured risk is located outside the state referred to in subsection (3)(j)(i), the state with the greatest allocated percentage of the insured's taxable premium for that surplus lines insurance contract;

(iii) if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the home state as determined under subsection (3)(j)(i) or (3)(j)(ii) for the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines insurance contract; or

(iv) if a group policyholder pays 100% of the premium from its own funds, the home state of the group policyholder as determined under subsection (3)(j)(i), or if a group policyholder does not pay 100% of the premiums from its own funds, the home state of the group member as determined under subsection (3)(j)(i).

(k) "Independently procured insurance" means surplus lines insurance procured directly by an insured from an eligible surplus lines insurer.

(l) "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more than one state.

(m) "Principal place of business" means the state where the insured business maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

(n) "Principal residence" means the state where an individual insured resides for the greatest number of days during a calendar year or, if the insured's principal residence is located outside of any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is located.

(e)(o) "Producing insurance producer" means ~~the individual a~~ Montana-licensed property and casualty insurance producer dealing directly with ~~the~~ a person seeking insurance.

(p) "Qualified risk manager" has the meaning provided in [section 4].

(q) "Single-state risk" means a risk covered by an unauthorized insurer with exposures in only one state.

(r) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

~~(f)~~(s) (i) "Surplus lines insurance" means ~~any insurance on risks resident, located, or to be performed in this state permitted to be placed~~ any property or casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer ~~through a surplus lines insurance producer~~ with an unauthorized insurer eligible to accept the insurance. *The term includes independently procured insurance.*

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

~~(g)~~(t) "Surplus lines insurance producer" means an individual or business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

~~(h)~~(u) "Unauthorized insurer" means ~~an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states, with respect to a state, an insurer not authorized to transact the business of insurance in the state. The term includes an insurance exchange authorized under the laws of another state. The~~

term does not include a risk retention group, as that term is defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4)."

Section 3. Exempt commercial purchaser defined. (1) An exempt commercial purchaser means an individual or business entity who at the time of placement:

(a) employs or retains a qualified risk manager to negotiate insurance coverage;

(b) has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and

(c) meets at least one of the following criteria:

(i) possesses a net worth in excess of \$20 million, as that amount may be adjusted pursuant to subsection (2);

(ii) generates annual revenue in excess of \$50 million, as that amount may be adjusted pursuant to subsection (2);

(iii) employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(iv) is a not-for-profit organization or a public entity generating annual budgeted expenditures of at least \$30 million, as that amount may be adjusted pursuant to subsection (2); or

(v) is a municipality with a population in excess of 50,000 persons.

(2) Effective January 1, 2015, and on every 5th subsequent January 1, the amounts in subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iv) must be adjusted to reflect the percentage of change for that 5-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

Section 4. Qualified risk manager defined. (1) A qualified risk manager means a person who:

(a) is an employee of or a third-party consultant retained by the commercial policyholder;

(b) provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis and purchases of insurance; and

(c) has the qualifications specified in subsection (2).

(2) To be a qualified risk manager, a person must have:

(a) (i) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(ii) (A) 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(B) one of the following designations:

(I) a designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(II) a designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(III) a designation as certified risk manager issued by the national alliance for insurance education and research;

(IV) a designation as a risk and insurance management society fellow issued by the global risk management institute;

(V) any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(b) (i) at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(ii) any one of the designations specified in subsection (2)(a)(ii)(B);

(c) at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(d) a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

Section 5. Section 33-2-302, MCA, is amended to read:

“33-2-302. Home state exclusive authority — ~~Conditions conditions~~ precedent to sale of surplus lines insurance. (1) *Pursuant to the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, the transaction of surplus lines insurance is subject to the statutory and regulatory requirements of the home state of the insured, regardless of whether a multistate risk is covered. If, at the time of the surplus lines insurance transaction, the home state:*

(a) *is Montana, the surplus lines insurance transaction is subject to the applicable statutory and regulatory requirements in Montana; or*

(b) *is not Montana, the Montana statutory and regulatory requirements regarding the surplus lines insurance transaction are preempted by the statutory and regulatory requirements of the home state.*

(2) *When Montana is the home state at the time of the surplus lines insurance transaction, the following apply:*

(a) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

~~(a)~~(i) the insurer is an eligible surplus lines insurer;

~~(b)~~(ii) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer; *as evidenced by one of the following:*

~~(e)~~(A) the producing insurance producer ~~makes~~ *making* a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

~~(B)~~ *the appearance on the current approved risk list of the kind of insurance being sought;*

~~(d)~~(iii) the insurance is not procured for the purpose of securing:

~~(i)~~(A) a lower premium rate than would be accepted by an authorized insurer unless the premium rate quoted by the authorized insurer is at least 10% higher and at least \$1,500 greater than the premium rate quoted by the unauthorized insurer; or

(ii)(B) an advantage in terms of the insurance contract; and

(e)(iv) all other requirements of this part are met.

(2)(b) A contract of insurance may not be placed with an unauthorized insurer under subsection (1)(d)(i) (2)(a)(iii)(A) unless the unauthorized insurer is the equivalent of A-rated or better is eligible under 33-2-307 and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.

(c) A surplus lines insurance producer placing coverage with an eligible surplus lines insurer for an exempt commercial purchaser is not required to satisfy the search requirements in subsection (2)(a) if:

(i) the surplus lines insurance producer placing the coverage has disclosed to the exempt commercial purchaser that the insurance may or may not be available from an authorized insurer that may provide greater protection with more regulatory oversight; and

(ii) the exempt commercial purchaser has subsequently requested in writing to the surplus lines insurance producer that the coverage be placed with the surplus lines insurer.”

Section 6. Section 33-2-303, MCA, is amended to read:

“33-2-303. Filing and endorsement of contract — submission form.

(1) Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part, along with a submission form prescribed by the commissioner by rule, must be filed with:

(a) the commissioner if Montana is the home state of the insured and:

(i) the coverage is for a single-state risk; or

(ii) the commissioner has not entered an agreement pursuant to [section 17] for multistate risks;

(b) the clearinghouse, established pursuant to [section 17], if in operation and if the commissioner has entered an agreement pursuant to [section 17] for multistate risks. ~~the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as “issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer’s license No.” and “NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent”.~~

(2) The commissioner shall establish by rule a submission form for reporting surplus lines transactions. The commissioner may establish different submission forms for insureds that independently procured insurance, surplus lines insurance producers, single-state risks, and multistate risks. The submission form for surplus lines insurance producers must include:

(a) information regarding the producing producer’s diligent efforts to place the coverage with authorized insurers and the results of the efforts; and

(b) the producing insurance producer’s affirmation that the producer has expressly advised the insured prior to placing the insurance that:

(i) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(ii) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

(3) *A submission form filed under this section is subject to public inspection.*

(4) *The commissioner may establish by rule an endorsement to be made on each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance by a surplus lines insurance producer under this part advising the insured that the coverage is issued by an unauthorized insurer that is not covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent. The surplus lines insurance producer shall properly fill in and sign the endorsement.”*

Section 7. Section 33-2-305, MCA, is amended to read:

“33-2-305. Licensing of surplus lines insurance producer — fee. (1) ~~If a Montana is the home state of the insured, the person places placing a contract of surplus lines insurance with an unauthorized insurer, the person placing the contract must be licensed as a property and casualty insurance producer and must possess a current surplus lines insurance producer’s license issued by the commissioner.~~

(2) ~~The commissioner shall issue a surplus lines insurance producer’s license to any qualified holder of licenses to persons to act as surplus lines insurance producers on either a resident or nonresident basis. To be eligible for a resident surplus lines insurance producer license, the person must hold a current property and casualty insurance producer license. only if the insurance producer has:~~

(3) *Persons applying for a resident surplus lines insurance producer license must:*

(a) ~~remitted remit~~ to the commissioner the fee prescribed by 33-2-708; and

(b) ~~submitted submit~~ to the commissioner a completed license application in a form *and manner* approved by the commissioner.

(4) *Persons applying for a nonresident surplus lines insurance producer license must comply with 33-17-401.*

~~(3)~~(5) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

~~(4)~~(6) A business entity is eligible to be licensed as a surplus lines insurance producer if:

(a) the business entity license lists the individuals within the business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the business entity license transact surplus lines insurance.

~~(5)~~(7) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer’s license.

(8) *This section may not be construed to require a surplus lines insurance producer license for independently procured insurance.*

(9) *The commissioner may participate in the national association of insurance commissioners’ producer licensing database regarding surplus lines insurance producer licensing.”*

Section 8. Section 33-2-307, MCA, is amended to read:

“33-2-307. Requirements for eligible surplus lines insurers — list of eligible surplus lines insurers. (1) *A If an unauthorized insurer is domiciled*

in any state, a surplus lines insurance producer may not place insurance with an that unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction; and

~~(a) has established satisfactory evidence of good reputation and financial integrity; and~~

~~(b) is qualified under one of the following subsections:~~

~~(i) the insurer~~

~~(b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:~~

~~(A)(i) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or~~

~~(B)(ii) \$15 million. An insurer possessing less than \$15 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors of as the quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; market availability; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$7 million \$4.5 million.~~

(2) If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears

~~(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than \$50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.~~

~~(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).~~

~~(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and~~

surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

~~(e) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and that is either:~~

~~(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or~~

~~(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.~~

~~(2) In the case of an insurance exchange, the statement required by subsection (1)(e) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.~~

~~(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of A list of eligible surplus lines insurers must be published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.~~

~~(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:~~

~~(i) is in unsound financial condition;~~

~~(ii) is no longer eligible under subsections (1) through (3);~~

~~(iii) has willfully violated the laws of this state; or~~

~~(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.~~

~~(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.~~

~~(5)(4) As used in this section, the following definitions apply:~~

~~(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.~~

~~(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."~~

Section 9. Section 33-2-310, MCA, is amended to read:

"33-2-310. Records and annual — tax and fee statement — affidavit.

(1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under the producer's license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by the producer. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

~~(2) Prior to April 1 of each year By the reporting date established by the commissioner by rule, the surplus lines insurance producer shall file with the commissioner or with the clearinghouse if requested by the commissioner a tax~~

and fee statement for the preceding calendar year showing reporting period. The commissioner shall establish by rule the content and form of the tax and fee statement that must include but is not limited to:

(a) name and ~~address principal residence of each~~ *the insured or the address at which the insured maintains its principal place of business for whom surplus lines insurance was procured;*

(b) *a brief and general description of the risk or exposure insured and where located;*

~~(b)(c)~~ *(c) name and home office address of each insurer providing the surplus lines insurance;*

~~(e)(d)~~ *(d) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;*

~~(d)(e)~~ *(e) date and term of the policy;*

~~(e)(f)~~ *(f) amount of premium returned on each policy canceled or not taken;*

~~(f)(g)~~ *(g) amount of tax and other sums to be collected from the insured;*

~~(g)(h)~~ *(h) identity of the producing insurance producer; and*

~~(h)(i)~~ *(i) additional information that the commissioner may reasonably require.*

~~(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of the efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that the producer has expressly advised the insured prior to placing the insurance that:~~

~~(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and~~

~~(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.~~

~~(3) If Montana is the home state of the insured, an insured that has independently procured insurance shall report the surplus lines insurance transaction to the commissioner or the clearinghouse if requested by the commissioner in a manner and format prescribed by the commissioner. The insured is responsible for payment of the taxes, stamping fees, and clearinghouse processing fees associated with the surplus lines insurance transaction and is subject to the penalties under this part for failure to timely pay the taxes and fees."~~

Section 10. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines insurance. (1) ~~There is imposed~~ *Except as provided in [section 17], when this state is the home state of the insured, the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and. The amount of premiums collected and the tax rate must be computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of the computation. Upon filing of the annual tax and fee*

statement referred to in 33-2-310(2), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by the surplus lines insurance producer during the preceding calendar year reporting period as well as the stamping fee on the premium payable by the insured regardless of whether the coverage includes risks or exposures partially located or to be performed in another state. ~~If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this state.~~

(2) *Except as provided in [section 17], if this state is not the home state of the insured, the commissioner may not collect any tax or stamping fee regardless of whether the coverage includes risks or exposures partially located or to be performed in this state.*

(3) *The commissioner by rule shall establish procedures that provide for the collection and payment of premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state."*

Section 11. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee. (1) A surplus lines insurance producer ~~who~~ *or an insured that independently procured insurance that fails to make and file the annual tax and fee statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to for a penalty of \$25 for each day of delinquency, commencing with April 1 30 calendar days after the due date established by the commissioner by rule.* The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction; *with the attorney general representing the commissioner.* The penalty when collected, unless collected by a justice's court, must be paid to the *commissioner, forwarded to the state treasurer, and placed to the credit of the general fund.* The surplus lines insurance producer's license is also subject to revocation as provided in 33-2-313.

(2) *If a surplus lines insurance producer or an insured that independently procured insurance does not pay the stamping fee provided for in 33-2-321, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."*

Section 12. Section 33-2-313, MCA, is amended to read:

"33-2-313. Revocation or suspension of license. (1) The commissioner shall revoke or suspend any surplus lines insurance producer's license, together with any license as an insurance producer:

(a) if the insurance producer fails to file ~~an annual a tax and fee statement or to remit the tax and fee as required by law;~~

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the ~~affidavit submission form~~ *required by 33-2-310(3);*

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension, revocation, or refusal to license or renew a license or for imposing a fine on an insurance producer or applicant apply to the suspension, revocation, or refusal to license or renew a license or to imposing a fine on a surplus lines insurance producer or applicant.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed."

Section 13. Section 33-2-316, MCA, is amended to read:

"33-2-316. Rules. The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(1) effectuation of The Surplus Lines Insurance Law; *and*

(2) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; ~~and~~

~~(3) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law."~~

Section 14. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine insurance;

~~(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;~~

~~(3)~~(2) insurance on property or operations of railroads engaged in interstate commerce; and

~~(4)~~(3) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft."

Section 15. Section 33-2-321, MCA, is amended to read:

~~**"33-2-321. Surplus lines advisory organizations — examination by commissioner — stamping** *Stamping fee and clearinghouse processing fee.* (1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:~~

~~(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;~~

~~(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;~~

~~(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and~~

~~(d) receive and disseminate to its members information relative to surplus lines insurance.~~

~~(2) The surplus lines advisory organization shall file with the commissioner:~~

~~(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;~~

~~(b) a copy of its bylaws, rules, and regulations governing its activities;~~

~~(c) a current list of its members;~~

~~(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at the commissioner's direction may be served; and~~

~~(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).~~

~~(3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, the commissioner may issue an order requiring the discontinuance of the violation.~~

~~(4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.~~

~~(5) (a) If a surplus lines advisory organization is performing functions as provided in subsection (1), it~~

~~(1) The commissioner may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses in connection with performing the functions set forth in subsection (1).~~

~~(b) If a surplus lines advisory organization is not operating as set forth in this section, the stamping fee may be collected by the commissioner and placed in a state special revenue account for commensurate with the expenses of regulating surplus lines. The stamping fee must be placed in a state special revenue account to the credit of the commissioner's office and used for the expenses of the commissioner's office in regulating surplus lines insurance.~~

~~(2) If the commissioner has entered an agreement with a clearinghouse as authorized pursuant to [section 17] to process multistate risks and allocate and distribute taxes and fees collected, the clearinghouse may collect a processing fee from the surplus lines insurance producer or the insured that independently procured insurance. The processing fee may be a flat fee per submission, a percentage of the premium payable for surplus lines insurance, or a combination of a flat fee and a percentage of premium payable. When a percentage of premium payable is used in calculating the processing fee, the charge may not exceed 1% of the premium payable for surplus lines insurance. The commissioner shall~~

establish the processing fee by rule to be commensurate with the clearinghouse's charges to process multistate risks and allocate and distribute taxes and fees collected to the participating states.

(3) If applicable, the surplus lines insurance producer shall collect the stamping fee and clearinghouse processing fee from the insured in addition to the premium payable for the insurance contract and any taxes and fees."

Section 16. Surplus lines advisory organization — consultation with commissioner in developing approved risk list. (1) A surplus lines insurance advisory organization of surplus lines insurance producers may be formed to:

- (a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;
- (b) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market;
- (c) receive and disseminate to its members information relative to surplus lines insurance; and
- (d) communicate member and industry concerns to the commissioner.

(2) The surplus lines insurance advisory organization shall file with the commissioner:

- (a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;
- (b) a copy of its bylaws, rules, and regulations governing its activities;
- (c) a current list of its members.

(3) The commissioner may consult with the organization in regard to the development of the approved risk list and other matters concerning the regulation of surplus lines insurance transactions.

Section 17. Authorization for agreements with other state regarding multistate risks. (1) Following negotiated rulemaking under Title 2, chapter 5, the commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively, for the purposes of collecting, allocating, and disbursing premium taxes and fees attributable to multistate risks. The allocation methodology of any agreement must be based upon readily available data, with simplicity and uniformity for the surplus lines insurance producer as a material consideration. Any agreement regarding multistate risks may require that a single, blended tax rate be used.

(2) An agreement entered into under this section must provide for:

- (a) uniform eligibility standards for unauthorized insurers;
- (b) uniform methods for reporting surplus lines insurance transactions and sharing information between the parties to the agreement based upon readily available data;
- (c) uniform methods for allocating and reporting surplus lines insurance risk classifications based upon readily available data;
- (d) uniform procedures for the collection, allocation, and distribution of taxes and fees attributable to the multistate risks;
- (e) uniform disclosures to policyholders regarding the reporting and collection of premium taxes on multistate risks;
- (f) an allocation methodology and resulting collection of premium tax revenue, less costs of administration and collection, that generate premium tax revenue not less than the premium tax revenue collected under 33-2-311;

(g) minimizing the data collection and reporting burden on insureds and surplus lines insurance producers;

(h) a withdrawal process that minimizes instability among the participating states and the surplus lines and insurance industries;

(i) regulatory provisions that provide certainty regarding compliance to all persons having an interest in surplus lines insurance transactions, including but not limited to insureds, regulators, surplus lines insurance producers, other insurance producers, and surplus lines insurers; and

(j) continued collection of premium taxes under 33-2-311 until the collection infrastructure under the agreement is fully operational and the provisions of the agreement are fully implemented.

(3) If the commissioner has entered into an agreement under subsection (1) for multistate risks and the agreement provides that each participating state develop a single, blended tax rate for multistate risks:

(a) the provisions of 50-3-109 are not applicable to the collection of premium taxes;

(b) the single, blended tax rate must be 3.3% on premiums and must be computed in the manner provided in 33-2-705(1) as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes and in excess of the premium otherwise required are not considered to be part of the premium for the purposes of the computation; and

(c) the 3.3% tax collected must be distributed as follows:

(i) 2.75% must be considered premium taxes as provided in 33-2-705 and paid to the state general fund; and

(ii) 0.55% must be considered fire premium taxes as provided in 50-3-109 and paid to the state general fund.

(4) If a single-state risk is involved and Montana is the home state of the insured, the surplus lines transaction must be submitted to the commissioner and the commissioner shall collect the tax at the same rate and in the same manner as provided in 33-2-705.

(5) If the commissioner has entered into a cooperative or reciprocal agreement under subsection (1), the commissioner may contract with the designated clearinghouse to process multistate risks and allocate and distribute taxes and fees collected.

(6) As used in this section, "readily available data" means Montana-specific data, if any, used to rate a surplus lines insurance policy.

Section 18. Codification instruction. [Sections 3, 4, 16, and 17] are intended to be codified as an integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to [sections 3, 4, 16, and 17].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Applicability. [This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 351

[SB 351]

AN ACT REVISING LAWS RELATED TO MEDICAID MANAGED CARE CONTRACTS; ESTABLISHING AN ADVISORY COUNCIL; REQUIRING REVIEW OF REQUESTS FOR PROPOSALS AND PROPOSED CONTRACTS; AMENDING SECTIONS 33-1-102, 33-31-115, 53-6-116, 53-6-702, 53-6-704, 53-6-705, 53-6-707, AND 53-21-701, MCA; REPEALING SECTION 53-6-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Advisory council — duties. (1) There is an advisory council to review requests for proposals issued and contracts proposed to be awarded under this part.

(2) The advisory council consists of seven members appointed as follows:

(a) two members appointed by the speaker of the house of representatives, at least one of whom must be a health care provider;

(b) two members appointed by the president of the senate, at least one of whom must be a health care provider; and

(c) three members appointed by the governor, at least one of whom must be a health care provider.

(3) Members shall serve staggered, 3-year terms.

(4) When the department proposes to seek a medicaid waiver for managed care, the council shall conduct the following activities before the department issues a request for proposal and after it has selected a vendor but before a contract is awarded:

(a) hold a public hearing in the geographic area that would be affected by the program or contract in order to:

(i) educate medicaid recipients, health care providers, and the public residing in the area about the provisions of the proposed program or contract and the consumer's options; and

(ii) accept public comment about the proposed program or contract;

(b) submit a report of its findings related to the public comment process to the appropriate interim or legislative committee, the legislative auditor's office, and the department.

(5) The council shall meet according to a schedule adopted by a majority vote of the council.

(6) The council is attached to the department for administrative purposes only, and members are entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503.

Section 2. Requests for proposals and contracts — review requirements — public notice and comment. (1) Before the department issues a request for proposals or awards a contract for the provision of services through a managed health care entity:

(a) the department shall meet the public notice, legislative presentation, and public comment requirements of 53-2-215;

(b) the legislative auditor's office and the state auditor's office, in consultation with the department, shall analyze the request for proposal and the proposed contract for:

- (i) actuarial soundness;
- (ii) network adequacy as provided for in Title 33, chapter 36, part 2; and
- (iii) consumer choice; and

(c) within 60 days of receipt of the request for proposal and proposed contract, the legislative auditor's office and state auditor's office shall complete their analyses and publish the findings of their analyses.

(2) (a) Before the department may award a contract, it shall seek an independent analysis to verify that the potential vendor is able to comply with the goals of the proposed managed care program.

(b) The vendor shall pay the costs of the analysis.

Section 3. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations ~~or to managed care community networks, as defined in 53-6-702,~~ to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to

separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A “service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.”

Section 4. Section 33-31-115, MCA, is amended to read:

“33-31-115. Applicability to managed health care entity. ~~(1) A managed health care entity, as defined in 53-6-702, is governed by the provisions of Title 53, chapter 6, part 7.~~

~~(2)(1) The department of public health and human services may limit the amount, scope, and duration of services provided by a managed health care entity under contract for programs established under Title 53. These services may be less than services required by this title.~~

~~(2) The delivery of programs of managed health care services established under Title 53 by a managed health care entity under contract with the department of public health and human services is exempt from the provisions of 33-31-301 and 33-31-321.”~~

Section 5. Section 53-6-116, MCA, is amended to read:

“53-6-116. Medicaid managed care — capitated health care. (1) The department of public health and human services, in its discretion, may develop managed care and capitated health care systems for medicaid recipients.

(2) The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount for each recipient.

(3) A managed care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(4) The provision of medicaid services through managed care and capitated health care systems is not subject to the limitations provided in 53-6-104. The managed care or capitated health care system that is provided to a defined population of recipients may be based on one or more of the medical assistance services provided for in 53-6-101.

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department.

(6) *A managed care or capitated health care system, except for a primary care case management service, that requires for implementation a waiver from the centers for medicare and medicaid is subject to the provisions of Title 53, chapter 6, part 7.*

Section 6. Section 53-6-702, MCA, is amended to read:

“53-6-702. Definitions. As used in this part, the following definitions apply:

(1) “Department” means the department of public health and human services.

(2) “Health maintenance organization” means a health maintenance organization as defined in 33-31-102.

~~(3) (a) “Managed care community network” or “network” means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:~~

~~(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or~~

~~(ii) operates statewide or covers 20% or more of the medicaid population.~~

~~(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.~~

(4)(3) (a) “Managed health care entity” or “entity” means a health maintenance organization or a managed care community network *an insurer regulated under Title 33 that:*

(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include:

(i) a provider of health care services under a contract with the department on a fee-for-service basis;

(ii) a medicaid primary care case management service within the meaning of 42 CFR 438; or

(iii) a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.

(5)(4) "Program" means an element of the integrated health care system created by this part."

Section 7. Section 53-6-704, MCA, is amended to read:

"53-6-704. Different benefit packages. (1) The department may by rule provide for different benefit packages for different categories of persons enrolled in the program. Alcohol and substance abuse services, services for mental disorders, services related to children with chronic or acute conditions requiring longer-term treatment and followup, and rehabilitation care provided by a freestanding rehabilitation hospital or a rehabilitation unit may be excluded from a benefit package and those services may be made available through a separate delivery system. If a service is excluded from the program but made available in a separate delivery system by a managed *health* care entity, that managed *health* care entity is subject to this part. An exclusion does not prohibit the department from developing and implementing demonstration projects for categories of persons or services. Benefit packages for persons eligible for medical assistance under Title 53, chapter 6, parts 1 and 4, may be based on the requirements of those parts and must be consistent with the Title XIX of the Social Security Act. This part applies only to services purchased by the department.

(2) The program established by this part may be implemented by the department in various contracting areas at various times. The health care delivery systems and providers available under the program may vary throughout the state. Except as otherwise provided in a contract for mental health services *and subject to the public comment and review provisions of [sections 1 and 2]*, a licensed managed health care entity must be permitted to contract in any geographic area for which it has a sufficient provider network and that otherwise meets the requirements of the state contract."

Section 8. Section 53-6-705, MCA, is amended to read:

"53-6-705. Requirements for managed health care entities. (1) A managed health care entity that contracts with the department for the provision of services under the program shall comply with the requirements of this section for purposes of the program.

(2) The entity shall provide for reimbursement for health care providers for emergency care, as defined by the department by rule, that must be provided to its enrollees, including emergency room screening services and urgent care that it authorizes for its enrollees, regardless of the provider's affiliation with the managed health care entity. Health care providers must be reimbursed for emergency care in an amount not less than the department's rates for those medical services rendered by health care providers who are not under contract with the entity to enrollees of the entity.

(3) *The entity shall maintain a network of health care providers that is sufficient in number and type to ensure that the services approved by the department for delivery to medicaid recipients covered by the entity are available without unreasonable delay as required under the network adequacy and quality assurance provisions of Title 33, chapter 36, and any rules promulgated under that chapter.*

(3)(4) The entity shall provide that any health care provider affiliated with a managed health care entity may also provide services on a fee-for-service basis to department clients who are not enrolled in a managed health care entity.

(4)(5) The entity shall provide client education services as determined and approved by the department, including but not limited to the following services:

(a) education regarding appropriate use of health care services in a managed care system;

(b) written disclosure of treatment policies and any restrictions or limitations on health services, including but not limited to physician services, clinical laboratory tests, hospital and surgical procedures, prescription drugs and biologicals, and radiological examinations; and

(c) written notice that the enrollee may receive from another provider those medicaid-covered services that are not provided by the managed health care entity but that are the financial responsibility of the entity.

~~(5)~~(6) The entity shall provide that enrollees within its system will be informed of the full panel of health care providers. Contracts for the provision of services beyond 125 miles from the borders of Montana may not be entered into if services of comparable cost and quality are available within the state of Montana.

~~(6)~~(7) The entity may not discriminate in its enrollment or disenrollment practices among recipients of medical services or program enrollees based on health status.

~~(7)~~(8) For purposes of participation in the medicaid program, the entity shall comply with quality assurance and utilization review requirements established in *Title 33, chapter 36*, and by the department by rule.

~~(8)~~(9) The entity shall require that each provider meets the standards for accessibility and quality of care established by law. The department shall prepare an annual report regarding the effectiveness of the standards on ensuring access and quality of care to enrollees.

~~(9)~~(10) The entity shall maintain, retain, and make available to the department records, data, and information, in a uniform manner determined by the department, that is *are*:

(a) sufficient for the department, *the legislative auditor's office, and the state auditor's office* to monitor utilization, accessibility, and quality of care; and ~~that~~ *is*

(b) consistent with accepted practices in the health care industry.

~~(10)~~(11) Except for health care providers who are prepaid, the entity shall pay all approved claims for covered services that are correctly completed and submitted to the entity within 30 days after receipt of the claim or receipt of the appropriate capitation payment or payments by the entity from the state for the month in which the services included on the claim were rendered, whichever is later. If payment is not made or mailed to the provider by the entity by the due date under this subsection, an interest penalty of 1% of any amount unpaid must be added for each month or fraction of a month after the due date until final payment is made. This part does not prohibit managed health care entities and health care providers from mutually agreeing to terms that require more timely payment.

~~(11)~~(12) The entity shall seek cooperation with community-based programs provided by local health departments, such as the women, infants, and children food supplement program, childhood immunization programs, health education programs, case management programs, and health screening programs.

~~(12)~~(13) The entity shall seek cooperation with community-based organizations, as defined by rule of the department, that may continue to operate under a contract with the department or a managed health care entity under this part to provide case management services to medicaid clients.

~~(13)~~(14) A managed health care entity that provides written notice pursuant to subsection ~~(4)(e)~~ (5)(c) to an enrollee of medicaid-covered services available from another provider is responsible for payment for those services by another provider.

(15) *A managed health care entity may not begin operation before the approval of any necessary federal waivers and the completion of the review of an application submitted to the department. The department may charge the applicant an application review fee for the department's actual cost of review of the application. The fee must be adopted by rule by the department. Fees collected by the department must be deposited in an account in the special revenue fund to be used by the department to defray the cost of application review.*"

Section 9. Section 53-6-707, MCA, is amended to read:

"53-6-707. Payment reductions and adjustments — freedom to contract. (1) The department shall by rule establish a method to reduce its payments to managed health care entities to take the following into consideration:

(a) any adjustment payments paid to health care facilities under subsection (2)(b) to the extent that those payments or any part of those payments have been taken into account in establishing capitated rates under 53-6-705; and

(b) the implementation of methodologies to limit financial liability for managed health care entities under 53-6-705.

(2) For key services provided by a hospital or nursing facility that contracts with an entity, adjustment payments that are not included in capitated rates must be paid directly to the hospital or nursing facility by the department. Adjustment payments may include but need not be are not limited to:

(a) adjustment payments to disproportionate share hospitals as defined by department rule;

(b) perinatal center payments; and

(c) payments for capital, direct medical education, indirect medical education, and certified registered nurse anesthetists;

(d) supplemental medicaid payments to hospitals made pursuant to 53-6-149; and

(e) supplemental medicaid payments to nursing facilities made pursuant to 15-60-211.

(3) For any hospital or nursing facility eligible for the adjustment payments described in this section, the department shall maintain, through the period ending June 30, 1996, reimbursement levels in accordance with statutes and rules in effect at the time the payments are made.

(4) *The department may not assign an existing agreement with a medicaid provider to a managed health care entity. The managed health care entity shall enter into a new agreement with a provider in order for the provider to be considered a part of the managed health care entity's network of providers.*

~~(4)~~(5) This part does not limit or otherwise impair the authority of the department to enter into a contract, negotiated pursuant to this part, with a managed health care entity, including a health maintenance organization, that provides for termination or nonrenewal of the contract without cause upon notice as provided in the contract and without a hearing. If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount,

scope, or duration of the medical services made available under the Montana medicaid program and managed care.”

Section 10. Section 53-21-701, MCA, is amended to read:

“53-21-701. Mental health managed care allowed — contract. (1) The department of public health and human services may contract with one or more persons for the management of comprehensive mental health services for medicaid recipients, as provided in 53-6-116, and for persons in households not eligible for medicaid with family income that does not exceed 160% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department shall determine whether or not a potential contractor that will serve medicaid enrollees is a managed *health care community network entity*, as defined in 53-6-702, prior to entering into a contract and shall ensure that each contractor that qualifies as a managed *health care community network entity* complies with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program.

(2) A managed care system is a program organized to serve the mental health needs of recipients in an efficient and cost-effective manner by managing the receipt of comprehensive mental health care and services for a geographical or otherwise defined population of recipients through appropriate health care professionals. The management of mental health care services must provide for services in the most cost-effective manner through coordination and management of the appropriate level of care and appropriate level of services.

(3) The department may enter into one or more contracts with a managed health care entity, ~~as defined in 53-6-702,~~ for the administration or delivery of mental health services. These contracts may be based upon a fixed monetary amount or a capitated amount for each individual, and a contractor may assume all or a part of the financial risk of providing and making payment for services to a set population of eligible individuals if the contractor has complied with *Title 33, chapter 31, and Title 53, chapter 6, part 7.* The department may require the participation of recipients in managed care systems based upon geographical, financial, medical, or other factors that the department may determine are relevant to the development and efficient operation of the managed care systems. Any contract for delivery of mental health care services that includes hospitalization or physician services, or both, must include a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into an agreement regarding the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services.

(4) The department shall formally evaluate contract performance with regard to specific outcome measures. The department shall explicitly identify performance and outcome measures that contractors are required to achieve in order to comply with contract requirements and to continue the contract. The contract must provide for progressive intermediate sanctions that may be imposed for nonperformance. The contract performance evaluation must include a section concerning contract enforcement, including any sanctions imposed along with the rationale for not imposing a sanction when the imposition is authorized. The evaluation must be performed at least annually.”

Section 11. Repealer. The following section of the Montana Code Annotated is repealed:

53-6-703. Managed care community network.

Section 12. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 6, part 7, and the provisions of Title 53, chapter 6, part 7, apply to [sections 1 and 2].

Section 13. Effective date. [This act] is effective on passage and approval.

Section 14. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011.

Approved May 6, 2011

CHAPTER NO. 352

[SB 354]

AN ACT ADOPTING THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT; CLARIFYING APPLICABILITY OF UNSWORN DECLARATIONS; PROVIDING FOR VALIDATION OF UNSWORN DECLARATIONS; PROVIDING A FORM FOR UNSWORN DECLARATIONS; AND CLARIFYING THE LEGAL AUTHORITY WITH RESPECT TO ELECTRONIC SIGNATURES UNDER THIS ACT WITH RESPECT TO FEDERAL LAW.

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

Section 1. Short title. [Sections 1 through 8] may be cited as the “Uniform Unsworn Foreign Declarations Act”.

Section 2. Definitions. In [sections 1 through 8]:

(1) “Boundaries of the United States” means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) “Sworn declaration” means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) “Unsworn declaration” means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Section 3. Applicability. [Sections 1 through 8] apply to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. [Sections 1 through 8] do not apply to a declaration by a declarant who is physically located

on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Section 4. Validity of unsworn declaration. (1) Except as otherwise provided in subsection (2), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of [sections 1 through 8] have the same effect as a sworn declaration.

(2) [Sections 1 through 8] do not apply to:

(a) a deposition;

(b) an oath of office;

(c) an oath required to be given before a specified official other than a notary public;

(d) a declaration to be recorded pursuant to Title 70; or

(e) an oath required for a self-proved will under 72-2-524.

Section 5. Required medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Section 6. Form of unsworn declaration. An unsworn declaration under [sections 1 through 8] must be in substantially the following form:

I declare under penalty of perjury under the law of Montana that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the (date) day of (month), (year), at(city or other location, and state),..... (country).

..... (printed name)

..... (signature)

Section 7. Uniformity of application and construction. In applying and construing [sections 1 through 8], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 8. Relation to Electronic Signatures in Global and National Commerce Act. [Sections 1 through 8] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 26, chapter 1, and the provisions of Title 26, chapter 1, apply to [sections 1 through 8].

Approved May 6, 2011

CHAPTER NO. 353

[SB 411]

AN ACT REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; AMENDING THE WAIVER OF INTEREST; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR

FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; AMENDING SECTIONS 15-1-206 AND 15-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-1-206, MCA, is amended to read:

“15-1-206. Waiver of penalties — interest. (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed ~~\$100 due upon the tax \$500 due per tax period.~~ *When the department enters into a payment plan with a taxpayer that allows the taxpayer to make installment payments of delinquent taxes, interest, and penalties, the department may agree to waive an additional \$100 of interest per tax period if the taxpayer makes each payment required by the plan on or before the due date of the payment and complies in a timely manner with all other terms of the payment plan.*”

Section 2. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) A (a) *Subject to subsection (1)(b), a person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less 5% of the tax due for each month or fraction of a month during which there is a failure to file the return or report in an amount up to 25% of the tax due. The late filing penalty runs for the period up to the date the department actually receives the late return or report. The penalty is computed only on the net amount of tax due as of the original due date, if any, on the return or report after credit has been given for amounts paid through withholding, estimated tax payments, and other credits claimed on the return.*

(b) *A penalty imposed under subsection (1)(a) must be reduced by the amount of the penalty imposed under subsection (2)(a) or (2)(b).*

(2) (a) Except as provided in ~~subsection~~ *subsections (2)(b) and (2)(d), a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.*

(b) *Except as provided in subsection (2)(d), a person who fails to pay a tax when due under Title 15, chapter 30, part 25, Title 15, chapter 53, Title 15, chapter 65, or Title 15, chapter 68, must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.*

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(d) *A penalty may not be imposed under subsection (2)(a) or (2)(b) on the amount of unpaid tax if the taxpayer demonstrates there is reasonable cause for the unpaid amount and the taxpayer acted in good faith with respect to the unpaid amount.*

(3) (a) *Subject to subsection (3)(b), a person who makes a substantial understatement of tax imposed under Title 15 must be assessed a substantial*

understatement penalty in an amount equal to 20% of the understatement. As used in this subsection (3), "understatement" means the amount of the tax required to be shown on the return for the tax year minus the amount of tax imposed that is shown on the return. For purposes of this subsection (3):

(i) there is a substantial understatement of tax imposed under Title 15, chapter 30, if the understatement is the greater of 10% of the amount of tax required to be shown on the return or \$3,000; and

(ii) there is a substantial understatement of tax imposed for all other chapters under Title 15 if the understatement exceeds the lesser of:

(A) 10% of the amount of tax required to be shown on the return if the understatement is greater than \$10,000; or

(B) \$500,000.

(b) The amount of substantial understatement must be reduced by the amount of the understatement that is attributable to:

(i) the tax treatment of any item by the taxpayer if there is or was substantial authority for the treatment; or

(ii) any item if the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer.

~~(3)~~(4) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return or report as required under Title 15 when due or fails to file a return or report within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of ~~not less than \$1,000 or more than \$10,000~~ 15% a month, up to 75% of the tax due as determined by the department. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(5) A person who files a fraudulent return or report under Title 15 is liable for an additional penalty of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the return or report. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.

(6) A person who files a frivolous return or report under Title 15 is liable, in addition to any other penalty imposed, for a penalty of \$2,500. A frivolous return or report is one that is filed by a person that omits information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based upon a frivolous position, or is based upon the taxpayer's action to impede collection of taxes. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.

~~(4)~~(7) (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest ~~rates~~ rate established under subsection ~~(4)(a)(i)~~ (7)(a)(i) for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ (7)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% *a year*.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

~~(5)(8)~~ (a) Except as provided in subsection ~~(5)(b)~~ (8)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

~~(6)(9)~~ Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

~~(7)(10)~~ Penalty and interest must be calculated and assessed commencing with the due date of the return.

~~(8)(11)~~ Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)(12)~~ Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection ~~(4)(a)(i)~~ (7)(a)(i). (Bracketed language in subsection ~~(5)(a)~~ (8)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)”

Section 3. Coordination instruction. If Senate Bill No. 199 is not passed and approved, then [this act] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to tax periods beginning after December 31, 2011.

Approved May 6, 2011

CHAPTER NO. 354

[SB 417]

AN ACT CREATING THE MILITARY AREA COMPATIBILITY ACT; ALLOWING A GOVERNING BODY TO DESIGNATE MILITARY AFFECTED AREAS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR MILITARY AFFECTED AREA REGULATIONS; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE MILITARY AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF A MILITARY AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; PROVIDING FOR PRIOR NONCONFORMING USES IN A MILITARY AFFECTED AREA; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A VARIANCE FROM THE REGULATIONS; AND PROVIDING PENALTIES AND REMEDIES FOR VIOLATIONS.

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

Section 1. Short title. [Sections 1 through 13] may be cited as the “Military Area Compatibility Act”.

Section 2. Legislative findings — purpose. The legislature finds and declares that:

(1) the ability of the United States military to train and operate effectively in Montana is crucial to the nation’s defense;

(2) increasing development pressures in and around existing military facilities and training areas represent a potential threat to the continued viability of military missions in Montana;

(3) local governments should be empowered to implement land use policies designed to protect existing military missions from encroachment and encourage expansion of military missions in Montana; and

(4) it is the purpose of [sections 1 through 13] to promote public health, safety, and general welfare by the delineation of military affected areas and by granting local governments the ability to develop regulations to ensure that surrounding land uses are compatible with uses in military affected areas.

Section 3. Military affected areas — definitions. For the purposes of [sections 1 through 13], the following definitions apply:

(1) “Airport” has the meaning provided in 67-1-101.

(2) “Governing body” has the meaning provided in 67-7-103.

(3) (a) “Military affected area” means land used for military purposes or in close proximity to military facilities that is directly affected or that will be directly affected by military uses.

(b) The term does not mean an area over which military aircraft operate when no other components of military facilities or military uses exist.

(4) “Military facilities” and “military uses” include but are not limited to military airports, military installations, intercontinental ballistic missile alert facilities or launch control centers, missile locations, access roads to missiles or missile-related facilities, and sites formerly used for military training that may be contaminated with hazardous wastes or explosive ordnance.

(5) “YDNL” has the meaning provided in 67-1-101.

Section 4. Designation of military affected areas — public hearing required — joint regulation board authorized. (1) A governing body of a political subdivision within which military operations occur may, in consultation with the appropriate military authority, designate a military affected area and may adopt, administer, and enforce military affected area regulations.

(2) The designation of a military affected area must be accompanied by maps and legal descriptions of the military affected area.

(3) (a) Before a governing body designates a military affected area and adopts or amends regulations governing the military affected area, the governing body shall hold at least one public hearing.

(b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, a town council, or the commissioners of a municipal airport authority.

(4) If a military affected area encompasses land within the boundaries of more than one political subdivision, the governing bodies of the political

subdivisions may by ordinance or resolution create a joint military affected area regulation board. The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The joint board shall consider the zoning regulations and ordinances of each affected political subdivision in developing its recommendations, but the board's recommendations are not binding on the governing bodies of any of the affected political subdivisions.

(5) A governing body may not designate land that is more than 1,200 feet from a launch control center or missile location as part of a military affected area.

Section 5. Military affected area regulations — contents. (1) Regulations adopted for the military affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and protect and facilitate the military missions executed within the military affected area. At a minimum, these regulations must give consideration to:

(a) the safety of persons physically present in a military affected area and the persons and property in the vicinity of the area;

(b) the character of the military operations conducted or expected to be conducted within the area;

(c) the nature of the terrain;

(d) the future development of the military affected area;

(e) United States department of defense recommendations for the safety zones, noise contours, and flight path restrictions for the appropriate type of military operation and the compatibility of surrounding land uses with the recommendations; and

(f) existing and potential future uses of the land proposed to be included in a military affected area.

(2) Military affected area regulations must be limited to addressing current and known future military uses and may be adopted only to:

(a) limit electromagnetic emissions that may interfere with military operations;

(b) describe the military affected area by referencing maps other than those required under [section 4(2)] and describing existing hazards and natural terrain that intrude into the military affected area;

(c) designate and describe zones within the military affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs;

(d) show the contours for decibel levels of 65 YDNL or greater on the maps that designate a military affected area if a study has been conducted pursuant to United States department of defense regulations and require that information to be considered before any building may occur within the military affected area;

(e) specify the permitted and conditional land uses within each zone of the military affected area by addressing:

(i) residences, schools, hospitals, day-care centers, or other concentrations of people, indoors or outdoors, that are incompatible with activities within the military affected area;

(ii) land uses that are incompatible with the decibel levels described in subsection (2)(d); and

(iii) other land uses that are incompatible with United States department of defense recommendations regarding compatible use of land within a military affected area.

Section 6. Regulations relative to zoning ordinances. (1) Subject to subsection (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under [sections 1 through 13] may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) If a political subdivision has a planning board, zoning commission, or joint military affected area board, a governing body may request the assistance of those boards or commissions in designating a military affected area or adopting, amending, or repealing military affected area regulations.

(3) When a conflict exists between the regulations adopted pursuant to [sections 1 through 13] and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

Section 7. Prior nonconforming uses. (1) All regulations adopted under [sections 1 through 13] must be reasonable and may not require the removal or alteration of any structure or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those structures or uses must be treated as prior nonconforming structures or uses that may remain or continue.

(2) A nonconforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a nonconforming structure or use unless a variance is issued by the appeals board provided for in [section 10] or unless the restoration occurs within 24 months of the damage having occurred and the resulting structure or use occupies the same physical footprint and is used for the same purpose as the original nonconforming structure or use. A nonconforming structure or use is considered to be substantially damaged when 80% or more of a structure is damaged or destroyed.

(3) The regulations may require the owner of structures to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a hazard in the vicinity of the military affected area.

Section 8. Permit system. (1) The regulations adopted pursuant to [sections 1 through 13] must provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering or replacing existing structures within the military affected area.

(2) A permit may not be granted that would allow the establishment of an incompatible use or that would allow a nonconforming use or structure to become a greater hazard or cause greater incompatibility with the military affected area.

Section 9. Enforcement. The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to [sections 1 through 13]. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

Section 10. Appeals. (1) The governing body that designated the military affected area shall act as a military affected area appeals board or appoint a military affected area appeals board that functions in the same manner as a

board of adjustment provided for in Title 76, chapter 2. If the governing body appoints a military affected area appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or a military affected area appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or a military affected area appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the military affected area appeals board, in which case the terms of the members for the purposes of [sections 1 through 13] are concurrent with their terms as members of the board of adjustment.

Section 11. Variance. (1) A person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to [sections 1 through 13] may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the military affected area appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to military missions.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the military affected area and when the noise or vibrations from normal and anticipated normal military operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a military affected area hazard.

(6) A person who builds a structure pursuant to a variance from the military affected area regulations or who takes or buys property in a military affected area for which a variance has been granted is considered to be aware that the military affected area existed before the variance was granted and that normal and anticipated normal military operations may result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not seek damages from a governing body, a local government, or the federal government for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal military operations.

Section 12. Penalty. A person who violates the provisions of [sections 1 through 13] or the regulations adopted under [section 5] is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500 pursuant to 45-2-104.

Section 13. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of [sections 1 through 13] or the regulations adopted pursuant to [sections 1 through 13].

Section 14. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 13].

Approved May 6, 2011

CHAPTER NO. 355

[SB 429]

AN ACT REVISING LAWS ON REINSTATEMENT OF A LIMITED LIABILITY COMPANY FOLLOWING ADMINISTRATIVE DISSOLUTION; AMENDING SECTION 35-8-912, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Section 35-8-912, MCA, is amended to read:

“35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company’s name satisfies the requirements of 35-8-103;

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid *unless a limited liability company has only one member and has not elected to be taxed as a corporation*; and

(e) include all annual reports not yet filed with the secretary of state.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.”

Section 2. Section 35-8-912, MCA, is amended to read:

“35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved *under the provisions of 35-8-209* may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution *to restore its right to carry on business in this state and to exercise all its privileges and immunities.* ~~The applicant shall file an official application. The application must~~ *A limited liability company applying for reinstatement shall submit to the secretary of state an official application, executed by a person who was a member or manager at the time of dissolution, setting forth:*

~~(a) recite the name of the company and the effective date of its administrative dissolution;~~

~~(b) state that the ground for dissolution either did not exist or has been eliminated;~~

~~(c) state that the company's name satisfies the requirements of 35-8-103;~~

~~(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and~~

~~(e) include all annual reports not yet filed with the secretary of state.~~

~~(a) the name and business mailing address of the limited liability company;~~

~~(b) a statement that the assets of the limited liability company have not been liquidated;~~

~~(c) a statement that a majority of its members have authorized the application for reinstatement; and~~

~~(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.~~

~~(2) The limited liability company shall submit with its application for reinstatement:~~

~~(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid unless a limited liability company has only one member and has not elected to be taxed as a corporation; and~~

~~(b) all annual reports not yet filed with the secretary of state.~~

~~(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.~~

~~(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.~~

~~(3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the limited liability company, the secretary of state shall:~~

~~(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;~~

~~(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and~~

~~(c) upon demand and receipt of the specified fee, issue to the limited liability company one or more certified copies of the certificate of reinstatement.~~

~~(4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of dissolution.~~

~~(5) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was administratively dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization."~~

Section 3. Coordination instruction. If Senate Bill No. 63 and [this act] are both passed and approved, then [section 18 of Senate Bill No. 63] amending 35-8-912 is void.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective October 1, 2011.

Section 5. Termination. [Section 1] terminates September 30, 2011.

Approved May 6, 2011

CHAPTER NO. 356

[HB 132]

AN ACT SIMPLIFYING CLASSIFICATION AND REPORTING OF VALUES ASSIGNED TO TAXABLE PROPERTY; UPDATING THE DEFINITION OF "ANIMAL UNIT MONTHS" TO COMPLY WITH CURRENT GRAZING PRACTICES; ELIMINATING OBSOLETE LANGUAGE RELATING TO AGRICULTURAL AND FOREST LAND; AND AMENDING SECTIONS 15-7-101, 15-7-102, 15-7-103, 15-7-139, 15-7-201, AND 15-44-103, MCA.

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

Section 1. Section 15-7-101, MCA, is amended to read:

"15-7-101. Classification and appraisal — duties of the department of revenue. (1) It is the duty of the department of revenue to accomplish the following:

- (a) the classification of all taxable lands;
- (b) the appraisal of all taxable city and town lots;
- (c) the appraisal of all taxable rural and urban improvements.

(2) A record ~~thereof~~ *of classifications and appraisals under subsection (1)* must be kept upon ~~such~~ *the* maps, plats, and forms and entered in ~~such~~ *the* books of record ~~as may be~~ prescribed by the department. ~~Such~~ *The* maps, plats, forms, and books of record ~~shall be~~ *are* official records of the state. A certified copy of all ~~such~~ records ~~as may be desired shall requested must~~ be furnished to the department.

(3) *When the department uses an appraisal method that values land and improvements as a unit, including the comparable sales method for residential condominiums or the income method for commercial property, the department shall establish a combined appraised value of land and improvements.*

~~(3)(4)~~ *It shall be* is the duty of the department to maintain current the classification of all taxable lands and appraisal of city and town lots and rural and urban improvements, as provided for herein."

Section 2. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) except as provided in subsection (1)(b), change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an

annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(d) *When the department uses an appraisal method that values land and improvements as a unit, including the comparable sales method for residential condominiums or the income method for commercial property, the notice must contain a combined appraised value of land and improvements.*

~~(d)~~(e) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been

determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 3. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103, 15-7-102, and this section by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands must be classified according to their use or uses.

(3) *Land classified as agricultural land or forest land must be subclassified and graded within each class according to soil type and productive capacity. In the classification work, use must be made of soil surveys and maps and all other pertinent available information. In the classification work, use must be made of soil surveys and maps and all other pertinent available information.*

~~(3)~~(4) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

~~(4)~~(5) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

~~(5)~~(6) In any periodic revaluation of taxable property completed under the provisions of 15-7-111, all property classified in 15-6-134 must be appraised on

the taxable portion of its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

~~(6)~~(7) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately.”

Section 4. Section 15-7-139, MCA, is amended to read:

“15-7-139. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules. (1) Subject to the conditions and restriction of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees’ official duties.

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

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

(b) The published notice must indicate:

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

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

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

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

(a) the landowner’s full name;

(b) the mailing address and property address; and

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

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

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

(7) A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner’s agent:

(a) gives permission to the department to enter the land to appraise or audit the property; or

(b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal base year provided for in 15-7-103(5)(6) and must establish a separate market value for each improvement and the land.

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

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

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

(11) The department shall adopt rules that are necessary to implement 15-7-140 and this section. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department."

Section 5. Section 15-7-201, MCA, is amended to read:

"15-7-201. Legislative intent — value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by ~~production categories~~ *productive capacity*. ~~Production categories are~~ *Productive capacity is determined from the productive capacity of the land* based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of agricultural land in each ~~land use and production category subclass~~;

(b) I is the per-acre net income of agricultural land in each ~~land use and production category subclass~~ and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately ~~in each land use based on production categories for each subclass~~.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of \$15 for each acre of irrigated land. Total allowable water costs may not exceed \$50 for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are \$5 an acre for pivot sprinkler irrigation systems; \$10 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and \$15 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year specified by the department in 15-7-103~~(5)~~(6). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price, and the base crop for valuation of nonirrigated land is spring wheat. The base unit for valuation of grazing lands is animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a ~~1,000-pound~~ 1,200-pound cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class *and subclass* of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained; and

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated.”

Section 6. Section 15-44-103, MCA, is amended to read:

“15-44-103. Legislative intent — value of forest lands — valuation zones. (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land *productivity* valuation ~~schedules~~ for each forest valuation zone, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula $V = I/R$, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula $I = (M \times SV) + AI - C$, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the average capitalization rate determined by the department after consultation with the forest lands taxation advisory committee, plus the effective tax rate. The capitalization rate must be adopted by rule. However, the capitalization rate for each year of the base period for tax years 2009 through 2014 may not be less than 8%.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation ~~schedules~~, the department shall use information and data provided by the university of Montana-Missoula.

(10) (a) There is a forest lands taxation advisory committee consisting of:

(i) four members with expertise in forest matters, one appointed by the majority leader of the senate, one by the minority leader of the senate, one by the majority leader of the house of representatives, and one by the minority leader of the house of representatives; and

(ii) three members appointed by the governor, one who is an industrial forest landowner, one who is a nonindustrial forest landowner, and one who is a county commissioner.

(b) The terms of the members expire on June 30 of the first year of each reappraisal cycle.

(c) The advisory committee shall:

(i) review data required by subsections (2) through (6), (8), and (9), including data on productivity value, stumpage value, wood production, capitalization rate, net income, and agriculture-related income;

(ii) recommend to the department any adjustments to data if required by changes in government forest land programs, market conditions, or prevailing forest lands practices;

(iii) recommend appropriate base periods and averaging methods to the department;

(iv) verify for each forest valuation zone and forest land classification *and subclassification* under subsection (3) that the income determined in subsection (5) reasonably approximates that which the average Montana forest landowner could have attained; and

(v) recommend forest land valuation ~~schedules~~ *techniques* to the department.”

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 9, 2011

CHAPTER NO. 357

[HB 258]

AN ACT ADDING THE DEFINITION OF "DAY VISITOR" AS A CATEGORY OF PERSON WHO VISITS A GUEST RANCH AND MAY BE SERVED FOOD; EXEMPTING A GUEST RANCH THAT SERVES FOOD TO DAY VISITORS FROM THE DEFINITION OF A "FOOD SERVICE ESTABLISHMENT"; AMENDING SECTIONS 50-50-102 AND 50-51-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or

(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests *and day visitors*.

(8) "Local board of health" means a county, city, city-county, or district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

(10) "Meat market" means an operation and buildings or structures in connection with it used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means an operation that is in the business of purchasing and selling perishable food to the public at retail.

(13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a political subdivision of the state, or other entity.

(14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).

(16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

(20) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Section 2. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) (a) "*Day visitor*" means a guest whose primary purpose on the guest ranch is to participate in recreational activities regularly provided by the guest ranch for a fee including but not limited to hunting, horseback riding, working cattle, hiking, biking, snowmobiling, or fishing, who may be served food incidental to the activity, and who does not stay overnight.

(b) The term does not include persons attending weddings, parties, large group functions, or other meals not related to the recreational activities described in subsection (2)(a) and who may not be served food unless the guest ranch or other entity serving the food has a license issued pursuant to 50-50-201.

(2)(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(3)(4) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(4)(5) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides recreational activities that include but are not limited to hunting, horseback riding, fishing, hiking, biking, snowmobiling, or a working cattle ranch experience to its guests and day visitors; and

(d) is a small establishment or a seasonal establishment.

(5)(6) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

~~(6)~~(7) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

~~(7)~~(8) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

~~(8)~~(9) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

~~(9)~~(10) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

~~(10)~~(11) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

~~(11)~~(12) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

~~(12)~~(13) "Transient guest" means a guest for only a brief stay, such as the traveling public."

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

Approved May 9, 2011

CHAPTER NO. 358

[HB 477]

AN ACT ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR THE MONTANA HISTORICAL SOCIETY FOR COSTS ASSOCIATED WITH

HISTORICAL INTERPRETATION AND THE ROBERT SCRIVER COLLECTION; PROVIDING AN ALLOCATION TO THE ACCOUNT FROM THE LODGING FACILITY USE TAX; DECREASING AN ALLOCATION TO THE DEPARTMENT OF COMMERCE FROM THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Montana historical interpretation state special revenue account. (1) There is a Montana historical interpretation state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the Montana historical interpretation state special revenue account money allocated from the lodging facility use tax proceeds allocated by 15-65-121.

(3) Money in the account is available to the Montana historical society by appropriation and must be used to pay costs associated with historical interpretation and the Robert Scriver collection.

Section 2. Section 15-65-121, MCA, is amended to read:

“15-65-121. Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections ~~(1)(a)~~ (2)(a) through ~~(1)(e)~~ (2)(f) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004.

(2) ~~The balance of the~~ *balance of the* tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account ~~is statutorily appropriated, as provided in 17-7-502, and~~ must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, *to the Montana historical interpretation state special revenue account*, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) ~~67.5%~~ *64.9%* to be used directly by the department of commerce; ~~and~~

(e) (i) except as provided in subsection ~~(1)(e)(ii)~~ *(2)(e)(ii)*, 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district; and

(f) 2.6% to the Montana historical interpretation state special revenue account established in [section 1].

~~(2)~~*(3)* If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

~~(3)~~*(4)* If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(5) The tax proceeds received that are transferred to a state special revenue account pursuant to subsections (2)(a) through (2)(e) are statutorily appropriated to the entities as provided in 17-7-502.

(6) The tax proceeds received that are transferred to the Montana historical interpretation state special revenue account pursuant to subsection (2)(f) are subject to appropriation by the legislature."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 3, part 1, and the provisions of Title 22, chapter 3, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 9, 2011

CHAPTER NO. 359

[SB 35]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BEDS OF NAVIGABLE RIVERS; DEFINING A "NAVIGABLE RIVER"; REQUIRING AUTHORIZATION FROM THE BOARD OF LAND COMMISSIONERS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES FOR PROVIDING LEASES, LICENSES, OR EASEMENTS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; CLARIFYING THE AUTHORITY OF THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS; AND AMENDING SECTIONS 77-1-121, 77-1-134, AND 77-2-101, MCA.

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

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) Article IX, section 3, of the Montana constitution provides that the use of all water that is or may be appropriated for sale, rent, distribution, or other beneficial use, the right-of-way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection with the beneficial use, and the sites for reservoirs necessary for collecting and storing water are a public use;

(b) a person who has historically used the bed of a navigable river in conjunction with a legal use of water or for other uses or a person who desires to use the bed of a navigable river in conjunction with a legal use of water or for other uses must be able to do so provided that statutory provisions are met; and

(c) any person who uses the bed of a navigable river after [the effective date of this act] shall apply to the state for a lease, license, or easement and pay full market value for the use of the riverbed.

(2) The purpose of [sections 1 through 9] is to clarify the process for the use of the beds of navigable rivers and how the state should be compensated for that use.

(3) Nothing in [sections 1 through 9] diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law.

Section 2. Definitions. Solely for the purposes of [sections 1 through 9], the following definitions apply:

(1) "Footprint" means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201.

(2) "Full market value" means an amount calculated based upon the area of a footprint and the fair market value as determined by rule or statute. The annual payment for a license issued under [sections 1 through 9] is \$150.

(3) "Navigable river" means a river adjudicated as navigable for title purposes by a court of competent jurisdiction.

Section 3. Use of beds of navigable rivers — authorization requirement restricted. The board or the department may require a lease, license, or easement under [sections 1 through 9] only for a footprint on the bed of a navigable river.

Section 4. Historic use of navigable riverbeds — authorization required — exemptions. (1) A person using the bed of a navigable river below the low-water mark without written authorization from the department prior to [the effective date of this act] who wants to continue use of the bed of a navigable river after [the effective date of this act] shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement by July 15, 2017.

(2) A person using the bed of a river below the low-water mark without written authorization from the department who wants to continue use of the bed after the date the river is determined to be a navigable river shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement within 5 years after the date that notice is issued by the department as provided in [section 6].

(3) The application must include:

(a) an application fee of \$50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the bed of a navigable river and that the use continues;

(ii) describing the acreage covered by the footprint prior to [the effective date of this act] or, for applications under subsection (2), the acreage covered by the footprint prior to the date the river was determined to be navigable; and

(iii) demonstrating that the use applied for under this section is the use shown in the evidence provided in subsection (3)(c); and

(c) (i) aerial photographs demonstrating the use to which the application for authorization applies; or

(ii) other evidence of the use to which the application for authorization applies.

(4) The department shall issue the authorization for a lease, license, or easement if:

(a) the applicant provides evidence to satisfy the requirements of subsection (3);

(b) the applicant pays the application fee and the full market value of the footprint acreage;

(c) the department has, if necessary, made a site inspection of the use to which the application for authorization applies;

(d) the authorization is for only the acreage of the footprint historically used by the applicant or the applicant's predecessor in interest; and

(e) the authorization is approved by the board.

(5) Proceeds from the application fee must be deposited in the account in [section 5] and must be used by the department to administer the provisions of this section.

(6) The full market value collected pursuant to subsection (4)(b) must be deposited in the appropriate trust fund established for receipt of income from the land over which an authorized use is granted.

(7) Issuance of an authorization pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(8) The department shall waive the survey requirements of 77-2-102 if the department determines that there is sufficient information available to define the boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.

(9) The requirements of this section do not apply to footprints:

(a) related to hunting, fishing, or trapping;

(b) that existed prior to November 8, 1889;

(c) for which the applicant can show an easement obtained from a state agency prior to [the effective date of this act] or prior to the date the river was determined to be a navigable river; or

(d) associated with a power site regulated pursuant to Title 77, chapter 4, part 2.

(10) A person using the bed of a navigable river who is subject to this section may continue to use the bed of the navigable river for that purpose while applying for a lease, license, or easement or until the applicable timeframe for obtaining a lease, license, or easement expires. The state may not impede access to a footprint or use of a footprint during the applicable timeframe or after a lease, license, or easement is obtained.

(11) The provisions of this section do not restrict the power of the board to seek adjudication of title pursuant to 77-1-105.

Section 5. Historic riverbed use account. (1) There is an account in the state special revenue fund into which the application fees collected pursuant to [section 4] must be deposited.

(2) The funds in the account may be used only for administering the provisions of [section 4].

Section 6. Notice required. (1) The department shall provide notice of the requirements of [sections 1 through 9] to owners of property adjacent to rivers that are navigable rivers on [the effective date of this act] and provide notice pursuant to subsection (3).

(2) For a river determined to be a navigable river after [the effective date of this act], the department shall provide notice of the requirements of [sections 1 through 9] to owners of property adjacent to the navigable river. The 5-year period pursuant to [section 4] begins when the department issues this notice and publishes the notice required in subsection (3) of this section.

(3) The department shall publish notice of navigable rivers and the requirements of [sections 1 through 9] twice in a newspaper of general circulation in the area of the navigable river.

Section 7. Navigable riverbed uses — lease, license, or easement required — challenges. (1) (a) After [the effective date of this act], the department shall require a person who proposes to use the bed of a navigable river up to the low-water mark to obtain a lease, license, or easement pursuant to the provisions of this title.

(b) The requirements of subsection (1)(a) do not apply to footprints related to hunting, fishing, or trapping.

(2) An applicant for authorization to use the bed of a navigable river pursuant to [section 4] or for a lease, license, or easement under this section may challenge the requirement of the authorization based on the navigability of the river, the location of the footprint related to the low-water mark, or other factors. There is no presumption of navigability because an entity has applied for or received a lease, license, or easement.

Section 8. Easement transferable — relocation of structure — increased footprint. (1) An easement granted pursuant to [section 4 or 7] runs with the benefited land and may be transferred or assigned.

(2) (a) Pursuant to rules adopted under [section 9], the holder of a lease, license, or easement under [section 4 or 7] may relocate or increase the size of a footprint and associated facilities due to the natural relocation of a navigable river or other factors.

(b) (i) The holder of a lease, license, or easement shall provide written notice to the department when a footprint or associated facilities are proposed to be relocated or increased in size.

(ii) Without prior board approval, the holder of a lease, license, or easement for water diversion structures associated with a water right may relocate or increase the size of the footprint if the relocation or increase is necessary to accomplish the purpose for which the lease, license, or easement was granted. If the footprint is increased in size, the holder shall pay full market value for the portion of the footprint that is greater than the original footprint and shall obtain the appropriate state or federal permits.

(3) Section 77-1-805 applies to the use of navigable rivers for which leases, licenses, or easements for the use of the bed have been granted.

Section 9. Board to adopt rules. To fulfill the requirement of [sections 1 through 9], the board shall adopt rules to:

- (1) determine the full market value for the use of the bed of a navigable river and establish a minimum payment for leases and easements;
- (2) allow an applicant to choose to apply for a lease, license, or easement depending on the type of proposed use and the duration of the use; and
- (3) allow the holder of a lease, license, or easement to relocate or increase the size of a footprint based on natural relocation of a navigable river or other factors.

Section 10. Section 77-1-121, MCA, is amended to read:

“77-1-121. Environmental review compliance — exemptions. (1) Except as provided in 77-1-122, [section 4], and subsection (2) of this section, the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title only if the department is actively proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or is acting in response to an application for an authorization for a proposal.

(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.

(3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title if the department or board chooses not to take any action, even though either may have the authority to take an action.

(4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

- (a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;
- (b) development or adoption of zoning regulations;
- (c) review of a proposed subdivision pursuant to Title 76, chapter 3;
- (d) actions related to annexation;
- (e) development or adoption of plans or reports on extension of services; and
- (f) other actions that are related to local planning.”

Section 11. Section 77-1-134, MCA, is amended to read:

“77-1-134. Irrigation structures, utility structures, and bridges of formerly taxable land — water rights. (1) If an irrigation structure, a utility structure, or a bridge was placed on land that consists of the bed of a navigable river or stream, the irrigation structure, utility structure, or bridge remains the property of the original owner or the original owner’s successors in interest or assignees. ~~Access~~ *Subject to [section 4(10)], access* to the irrigation structures, utility structures, and bridges described in this section for the purposes of operation, maintenance, repair, enhancement, or improvement may not be impeded by the state.

(2) ~~The Subject to [section 4(10)], the change of designation of the bed of a navigable river or stream from a taxable to a nontaxable status may not interfere with or impede the exercise of a water right, including a livestock watering right for which a claim was not required to be filed pursuant to 85-2-212 and 85-2-222.~~

Section 12. Section 77-2-101, MCA, is amended to read:

“77-2-101. Easements for specific uses. (1) Upon proper application as provided in 77-2-102, the board may grant easements on state lands for the following purposes:

- (a) schoolhouse sites and grounds;
- (b) public parks;
- (c) community buildings;
- (d) cemeteries;
- (e) conservation purposes:

(i) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001;

(ii) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001; and

(iii) to a nonprofit corporation for the Owen Sowerwine natural area located within section 16, township 28 north, range 21 west, in Flathead County; and

(f) for other public uses.

(2) The board may grant easements on state lands for the following purposes:

(a) right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, or telegraph or telephone line, or any other public use as defined in 70-30-102; ~~or~~

(b) any private building or private sewage system that encroaches on state lands; *or*

(c) *the use of the bed of a navigable river pursuant to [section 4 or 7].”*

Section 13. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 14. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 through 9].

Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 9, 2011

CHAPTER NO. 360

[SB 36]

AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL DECISION ON A PERMIT APPLICATION OR A

CHANGE IN APPROPRIATION RIGHT; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 85-2-125, MCA, is amended to read:

“85-2-125. Recovery of costs and attorney fees by prevailing party.

(1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to district court, the district court shall may award the prevailing party reasonable costs and attorney fees.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, “enforce a water right” means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.”

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

Section 3. Applicability. [This act] applies to an application for a permit or a change in an appropriation right filed on or after [the effective date of this act].

Approved May 9, 2011

CHAPTER NO. 361

[SB 156]

AN ACT ALLOWING TRIBAL FAMILY ASSISTANCE PLANS TO USE A PORTION OF TEMPORARY ASSISTANCE TO NEEDY FAMILIES MAINTENANCE OF EFFORT FUNDS FOR NONCASH BENEFITS; AMENDING SECTION 53-4-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-4-210, MCA, is amended to read:

“53-4-210. Tribal family assistance plan. (1) As used in this section, “Indian tribe” means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(2) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 612, authorizes an Indian tribe or a combination of tribes to request federal approval to implement a tribal family assistance plan.

(3) (a) If a Montana Indian tribe or a combination of tribes receives approval to implement a tribal family assistance plan and chooses to base ~~their~~ its share of the federal temporary assistance for needy families block grant on the same federal fiscal year 1994 service population as ~~they plan~~ it plans to serve under ~~their~~ the tribal family assistance plan, the legislature shall continue to provide the Indian tribe or combination of tribes with a proportionate state share ~~for~~ cash benefits based on the maintenance of effort level established by the legislature for that biennium or the maintenance of effort level set in statute.

(b) A tribe or combination of tribes may use the state share for:

(i) monthly cash benefit payments; or

(ii) supportive services costs as allowed under the Montana state plan for the temporary assistance for needy families program.

(4) The Indian tribe or combination of tribes retain eligibility to form a partnership with the department and share funding for approved special projects related to welfare reform.

(5) The department shall provide the Indian tribe or combination of tribes with a reasonable level of technical assistance in the form of eligibility and case management training, policy interpretation, and automated system background information. The technical assistance must be provided at no cost to the Indian tribe or combination of tribes for a period of 1 year after the inception of the tribal family assistance plan. After 1 year, the Indian tribe or combination of tribes may contract with the department for continued technical assistance.

(6) The tribe or combination of tribes may contract with the department for the provision of participant services or associated administrative functions that the tribe and the department find appropriate.

(7) The department shall transfer to each new tribal family assistance plan after April 28, 1999, \$100,000 of general fund money from existing general fund appropriation authority for each of the fiscal years of the succeeding biennium for the use of each tribe implementing a family assistance plan.”

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved May 9, 2011

CHAPTER NO. 362

[SB 410]

AN ACT PROVIDING FOR THE DISPOSITION OF ANY FUNDS RECOVERED BY THE STATE OF MONTANA FROM PPL MONTANA, LLC, FOR THE USE OF NAVIGABLE RIVERBED LANDS FOR POWER GENERATION FROM 2000 THROUGH 2007; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR ANY RECOVERED FUNDS FOR THE PURPOSE OF PURCHASING REAL PROPERTY; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO PURCHASE REAL PROPERTY AND APPURTENANCES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; PROVIDING FOR OFFSETTING OF LAND PURCHASES; ESTABLISHING LIMITS ON ACQUISITION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, on March 30, 2010, the Montana Supreme Court in PPL Montana, LLC v. State, 2010 MT 64, 355 Mont. 402, 229 P.3d 421 (2010), affirmed the decision by the Montana First Judicial District Court, Lewis and Clark County, that the use of navigable riverbed lands for power generation subjected PPL Montana to the payment of damages under Montana’s hydroelectric resources laws and held that the navigable riverbeds are part of the state’s public land trust under Article X, section 11, of the Montana Constitution; and

WHEREAS, the Montana Supreme Court affirmed the judgment entered for the State of Montana in the amount of \$40,956,180, plus postjudgment interest,

as compensatory damages for PPL Montana's use of state-owned riverbeds from 2000 through 2007; and

WHEREAS, the Montana Supreme Court determined the riverbeds are held "in trust for the people", but it did not determine which specific beneficiaries are entitled to recovery from the award of compensatory damages and postjudgment interest; and

WHEREAS, the Montana Supreme Court did not determine whether past, present, or future beneficiaries are entitled to compensation; and

WHEREAS, in 1937 the Montana Legislature enacted legislation providing that when a navigable stream changes course, the abandoned bed belongs to the State of Montana to be held in trust for the benefit of public schools by enacting section 1, Chapter 36, Laws of 1937, now codified as section 77-1-102, MCA; and

WHEREAS, PPL Montana petitioned the United States Supreme Court to review the Montana Supreme Court's decision and overturn the award of damages; and

WHEREAS, compensatory damages and postjudgment interest have not been paid to the state based on PPL Montana's pending appeal to the United States Supreme Court; and

WHEREAS, it is the Legislature's intent to balance the interest of past, present, and future beneficiaries by clarifying that any money received by the State of Montana from PPL Montana as a result of the litigation cited in this preamble must be used to purchase higher-producing state lands while selling lower-producing state lands; and

WHEREAS, it is the Legislature's intent to distribute to the public schools the net interest and income earned on real property and appurtenances purchased.

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

Section 1. Public land trust acquisition account. (1) There is a public land trust acquisition account in the state special revenue fund established in 17-2-102. Any funds recovered by the state as a result of the claim that PPL Montana, LLC, owes compensation to the state for using state-owned riverbeds from 2000 through 2007 and any interest that accumulates on the funds must be deposited in the account. The account must be administered by the department and is subject to the provisions of Article X, section 11, of the Montana constitution.

(2) Money deposited in the account pursuant to subsection (1) may be used only for costs associated with evaluating potential purchases and for the purpose of purchasing interests in and appurtenances to real property in accordance with [section 2]. Any interest earned on money deposited in the account must be deposited in the guarantee account provided for in 20-9-622 for distribution to public schools on a monthly basis.

Section 2. Public land trust purchases. (1) Subject to legislative appropriation, the board is authorized to evaluate potential purchases and purchase interests in and appurtenances to real property from the proceeds of the account established in [section 1] pursuant to the limitations of 77-1-220, [section 1], and this section. Transactional costs may not exceed 7% of the purchase price of acquired property. Prior to purchasing interests in and appurtenances to real property, the board shall consider the following:

- (a) the income-generating potential of the real property and appurtenances;
- (b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702;

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8; and

(d) the cost-benefits of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(2) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and outweigh the financial risks. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the public land trust;

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

(e) determine the potential for job creation.

(3) All interests in real property and appurtenances acquired under this section must be managed pursuant to this title and are subject to the provisions of Article X, section 11, of the Montana constitution.

(4) After deductions for administrative costs pursuant to 77-1-109, the net interest and income earned on real property and appurtenances purchased with funds from the account established in [section 1] must be distributed to the guarantee account provided for in 20-9-622 for distribution to public schools.

Section 3. Section 77-1-220, MCA, is amended to read:

“77-1-220. Offsetting purchases — proceeds — records. (1) To the extent practical and consistent with the board’s powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to 77-1-218, and 77-1-219, and [section 2] by selling an equal amount of land.

(2) *Proceeds received from offsetting sales may not be used for:*

(a) *purchasing additional lands; or*

(b) *the land banking process under 77-2-361 through 77-2-367.*

(3) *A separate record of the proceeds received from each sale of land must be maintained.”*

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 and 2].

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

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the use of funds identified in [section 1] prior to [the effective date of this act].

Approved May 9, 2011

CHAPTER NO. 363

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2013; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [This act] may be cited as “The General Appropriations Act of 2011”.

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2013 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated “Biennial” may be spent in either year of the biennium. An appropriation item designated “Restricted” may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated “One Time Only” or “OTO” may not be included in the present law base for the 2015 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated “Biennial”, “Restricted”, “One Time Only”, or “OTO”. The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], “program” has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinarily numbered with an Arabic numeral.

Section 6. Personal services funding — 2015 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2015 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by fund or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2015 biennium submitted by November 1 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 8. Effective date. [This act] is effective July 1, 2011.

Section 9. Appropriations. The following money is appropriated for the respective fiscal years:

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
A. GENERAL GOVERNMENT							
LEGISLATIVE BRANCH (1104)							
1. Legislative Services (20) (Biennial)							
6,204,118	863,099	0	0	7,067,217	286,242	0	7,287,038
a. Retrocommissioning the Capitol Building (Biennial/OTO)							
240,000	0	0	0	240,000	0	0	0
2. Legislative Committees and Activities (21) (Biennial)							
696,877	0	0	0	696,877	0	0	405,133
3. Fiscal Analysis and Review (27) (Biennial)							
1,761,059	0	0	0	1,761,059	0	0	1,799,669
4. Audit and Examination (28) (Biennial)							
2,319,743	1,686,755	0	0	4,006,498	1,618,208	0	4,011,611
Total							
11,221,797	2,549,854	0	0	13,771,651	1,904,450	0	13,503,451
Legislative Services includes a reduction in general fund money of \$8,877 in FY 2012 and \$8,840 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.							
CONSUMER COUNSEL (1112)							
1. Administration Program (01)							
0	1,393,320	0	0	1,393,320	0	0	1,393,320
a. Caseload Contingency (OTO)							
0	243,899	0	0	243,899	0	0	247,553
Total							
0	1,637,219	0	0	1,637,219	0	0	1,640,873

	Fiscal 2012				Fiscal 2013			
	General Fund	State Special Revenue	Federal Special Revenue	Total	General Fund	State Special Revenue	Federal Special Revenue	Total
GOVERNOR'S OFFICE (3101)								
1. Executive Office Program (01)	2,589,554	0	0	2,589,554	2,586,155	0	0	2,586,155
2. Executive Residence Operations (02)	106,992	0	0	106,992	107,618	0	0	107,618
3. Air Transportation Program (03)	313,262	19	0	313,281	321,554	19	0	321,573
4. Office of Budget and Program Planning (04)	1,565,588	0	0	1,565,588	1,576,225	0	0	1,576,225
a. Legislative Audit (Restricted/Biennial)	17,956	0	0	17,956	0	0	0	0
5. Indian Affairs (05)	172,789	0	0	172,789	172,455	0	0	172,455
6. Centralized Services (06)	303,015	0	0	303,015	303,657	0	0	303,657
a. Legislative Audit (Restricted/Biennial)	39,505	0	0	39,505	0	0	0	0
b. Computer Replacement (OTO)	21,800	0	0	21,800	21,800	0	0	21,800
7. Lieutenant Governor (12)	326,052	0	0	326,052	325,265	0	0	325,265
8. Citizens' Advocate Office (16)	88,315	11,169	0	99,484	88,490	11,104	0	99,594
9. Mental Disabilities Board of Visitors (20)	396,615	0	0	396,615	397,593	0	0	397,593
Total	5,941,443	11,188	0	5,952,631	5,900,812	11,123	0	5,911,935

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
1. Business and Government Services (01)							
a. HAVA (Biennial/OTO)	0	0	550,000	0	0	0	550,000
Total	0	0	550,000	0	0	0	550,000
COMMISSIONER OF POLITICAL PRACTICES (3202)							
1. Administration (01)							
a. Legislative Audit (Restricted/Biennial)	562,360	0	0	564,214	0	0	562,360
a. Legislative Audit (Restricted/Biennial)	7,091	0	0	0	0	0	7,091
Total	569,451	0	0	564,214	0	0	569,451
OFFICE OF THE STATE AUDITOR (3401)							
1. Central Management (01)							
a. Legislative Audit (Restricted/Biennial)	0	1,215,825	0	0	1,216,860	0	1,215,825
a. Legislative Audit (Restricted/Biennial)	0	8,854	0	0	0	0	8,854
2. Insurance Program (03)							

Executive Office Program includes a reduction in general fund money of \$8,016 in FY 2012 and \$7,983 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

The Air Transportation Program is appropriated up to \$45,000 for the 2013 biennium from the air transportation state special revenue fund to be used for aircraft maintenance and operating expenses.

SECRETARY OF STATE (3201)

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
	0	15,681,505	0	0	15,651,898	0	15,651,898
a. Legislative Audit (Restricted/Biennial)	0	29,167	0	0	0	0	0
b. Contract Examinations (Biennial)	0	747,605	0	0	435,605	0	435,605
3. Securities (04)	0	876,459	0	0	879,105	0	879,105
a. Legislative Audit (Restrictd/Biennial)	0	6,511	0	0	0	0	0
b. Securities Contract Examinations (Biennial)	0	41,392	0	0	41,392	0	41,392
c. Securities Legal Funding (OTO)	0	92,042	0	0	91,799	0	91,799
Total	0	18,699,360	0	0	18,316,659	0	18,316,659
DEPARTMENT OF REVENUE (5801)							
1. Director's Office (01)	5,357,049	106,445	0	113,801	0	5,577,295	5,581,287
a. Legislative Audit (Restricted/Biennial)	185,748	0	1,000	0	0	1,000	1,000
b. Tax Policy and Research Overtime (Restricted)	0	0	0	0	70,000	0	70,000
2. Information Technology and Processing (02)	10,858,929	124,804	0	136,935	124,804	0	11,127,042
a. Imaging and Scanning Maintenance (Restricted)	150,000	0	0	0	150,000	0	150,000

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
b. Computer Programming (Restricted/Biennial/OTO)	500,000	0	0	0	0	0	0
3. Liquor Control Division (03)	0	0	2,231,696	0	0	2,236,497	2,236,497
a. Termination Payouts (Restricted)	0	0	25,000	0	0	25,000	25,000
b. Overtime and Temporary Staff (Restricted)	0	0	50,000	0	0	50,000	50,000
c. SB 29 — Alcohol Server and Sales Training	0	0	89,004	0	0	85,419	85,419
4. Citizen Services and Resource Management (05)	1,876,058	187,678	0	1,877,962	187,261	0	2,108,438
5. Business and Income Taxes Division (07)	10,025,706	544,724	269,210	10,036,820	545,200	270,218	10,852,238
a. Abandoned Property Workload (OTO)	0	112,066	0	0	112,771	0	112,771
6. Property Assessment Division (08)	19,326,056	69,021	0	19,351,045	64,028	0	19,415,073
Total	48,279,546	1,144,738	2,689,621	47,709,977	1,141,671	2,691,899	51,814,765

Computer Programming is contingent on passage and approval of House Bill No. 316 or Senate Bill No. 329.

Information Technology and Processing and Property Assessment Division do not include present law adjustments for non-department of administration rent increases for the department of revenue for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of revenue's leases for office space and that the department of revenue either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).

Liquor Control Division is appropriated from the liquor enterprise funds not to exceed \$124,000,000 in fiscal year 2012 and \$130,000,000 in fiscal year 2013 to maintain adequate inventories necessary to meet statutory requirements, to pay freight costs, and to transfer profits and taxes to appropriate accounts.

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
1. Director's Office (01)							
70,891	577	37,133	0	70,985	577	37,133	108,695
a. Legislative Audit (Restricted/Biennial)							
68,252	0	0	0	0	0	0	0
b. Presidential Electors (OTO)							
0	0	0	0	1,500	0	0	1,500
c. Burial Board (Restricted)							
12,000	0	0	0	12,000	0	0	12,000
2. Governor-Elect Program (02)							
a. Governor-Elect (Restricted/OTO)							
0	0	0	0	50,000	0	0	50,000
3. State Accounting Division (03)							
1,264,613	0	4,910	48,760	1,263,991	0	4,910	1,317,661
4. Architecture and Engineering Program (04)							
0	1,877,493	0	0	0	1,881,126	0	1,881,126
a. Legislative Audit (Restricted/Biennial)							
0	1,586	0	0	0	0	0	0
5. General Services Program (06)							
1,987,817	53,149	0	0	1,953,558	53,033	0	2,006,591
a. Legislative Audit (Restricted/Biennial)							
0	44	0	0	0	0	0	44
b. Close and Sell Old Corrections Building (OTO)							
39,230	0	0	0	0	0	0	39,230

Business and Income Taxes Division includes a reduction in general fund money of \$76,818 in FY 2012 and \$76,495 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

DEPARTMENT OF ADMINISTRATION (6101)

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
363,811	0	600,000	0	364,710	0	600,000	964,710
a. Legislative Audit (Restricted/Biennial)	852	0	0	0	0	0	0
Total	5,248,029	6,804,204	16,066,675	5,248,842	6,823,681	16,763,104	28,835,627
Business Resources Division includes a reduction in general fund money of \$3,317 in FY 2012 and \$3,303 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.							
If House Bill No. 351 is not passed and approved, the Community Development Division is decreased by \$375,674 state special revenue in FY 2012 and \$375,674 state special revenue in FY 2013.							
DEPARTMENT OF LABOR AND INDUSTRY (6602)							
1. Workforce Services Division (01)	0	10,650,425	21,290,708	0	31,941,133	0	31,874,714
2. Unemployment Insurance Division (02)	0	3,716,424	9,387,482	0	13,103,906	0	13,151,893
a. UI Modernization (OTO)	0	0	186,490	0	186,490	0	185,951
3. Commissioner's Office/Centralized Services Division (03)	278,173	683,596	580,398	279,307	685,338	580,288	1,633,450
4. Employment Relations Division (04)	1,074,228	10,561,063	713,134	1,080,436	10,570,193	717,181	12,367,810
a. HB 186 — Worksafe Montana	0	500,000	0	0	500,000	0	500,000
b. HB 334 — Workers' Compensation Revisions	0	442,772	0	0	408,297	0	408,297
5. Business Standards Division (05)	0	14,888,924	12,673	0	14,901,597	12,669	14,982,968

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
3. National Guard Scholarship Program (03) (Biennial)	209,408	0	0	209,408	0	0	209,408
4. Starbase Program (04)	0	0	315,282	0	0	315,903	315,903
a. Legislative Audit (Restricted/Biennial)	0	0	718	0	0	0	0
5. Army National Guard Program (12)	1,618,700	0	12,491,694	1,630,987	0	12,508,128	14,139,115
a. Legislative Audit (Restricted/Biennial)	13,647	0	26,575	0	0	0	0
b. Military Museum — Equipment (Restricted/Biennial/OTO)	100,000	0	0	0	0	0	0
6. Air National Guard Program (13)	378,721	0	4,012,143	382,162	0	4,040,009	4,422,171
a. Legislative Audit (Restricted/Biennial)	1,257	0	4,489	0	0	0	0
7. Disaster and Emergency Services (21)	1,058,556	370,200	6,263,590	1,063,980	350,200	6,262,505	7,676,685
a. Legislative Audit (Restricted/Biennial)	3,950	0	6,106	0	0	0	0
8. Veterans' Affairs Program (31)	886,097	1,012,249	0	883,722	941,173	0	1,824,895
a. Legislative Audit (Restricted/Biennial)	2,873	1,437	0	0	0	0	0
Total	5,820,253	1,383,886	26,222,691	5,711,928	1,291,373	26,226,145	33,229,446

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
166,861	10,404	196,229	0	0	0	0	373,494
2. Quality Assurance Division (08)							
2,406,706	557,772	5,853,425	0	2,335,599	625,495	5,802,392	8,763,486
a. Medical Marijuana Program Staffing (Restricted)							
0	80,501	0	0	0	80,142	0	80,142
b. Medical Marijuana Program Annualization (Restricted)							
0	29,620	0	0	0	29,620	0	29,620
c. SB 423 — Medical Marijuana (OTC)							
0	150,000	0	0	0	150,000	0	150,000
3. Technology Services Division (09)							
8,487,823	1,065,451	11,851,928	0	8,840,314	1,069,188	12,306,043	22,215,545
4. Management and Fair Hearings Division (16)							
467,338	35,393	673,683	0	466,962	35,333	673,273	1,175,558
Total							
14,996,605	2,584,865	23,195,529	0	15,142,723	2,652,668	23,453,755	41,249,146

The Quality Assurance Division is appropriated one-time-only funding for the 2013 biennium in an amount not to exceed \$103,061 of the state special revenue fund share and \$204,308 of the federal special revenue share from the recovery audit contract to pay recovery audit costs. Payments to the contractor are contingent upon the amount of funds recovered and may not exceed 12.5% of the amount recovered.

Funding for Medical Marijuana Program Staffing may only be used by the Quality Assurance Division to pay staff to administer the medical marijuana registry.

Funding for Medical Marijuana Program Annualization may only be used by the Quality Assurance Division to pay annualized expenses for the medical marijuana registry.

SB 423 — Medical Marijuana is contingent on passage and approval of Senate Bill No. 423.

Quality Assurance Division does not include present law adjustments for non-department of administration rent increases for the department of public health and human services for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of public health and human services' leases for office space and that the department of public health and human services either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
b. Area Agencies on Aging (Restricted/OTO)	1,500,000	0	0	1,500,000	0	0	1,500,000
c. County Nursing Home Intergovernmental Transfer (IGT) (Restricted)	0	3,134,373	6,136,181	0	3,516,000	6,746,699	10,262,699
d. Direct Care Provider Rate Increase (Restricted/OTO)	0	1,638,708	3,208,106	0	1,711,292	3,283,723	4,995,015
e. Restore Personal Assistance (OTO)	0	251,358	492,085	0	251,358	482,320	733,678
5. Addictive and Mental Disorders Division (33)	62,845,099	14,008,262	49,298,273	0	14,801,412	50,397,417	128,515,387
Total	323,656,704	127,007,364	860,820,929	332,173,566	128,802,437	887,772,386	1,348,748,389

If House Bill No. 34 is passed and approved, the appropriation for Health Resources Division is reduced by \$26,938 state special revenue in FY 2012 and \$25,791 state special revenue in FY 2013.

Health Resources Division includes a reduction in general fund money of \$510,515 in FY 2012 and \$508,369 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

100 Slots for Home and Community Based Waiver Services (HCBS) may be used only to fund medicaid services in the following order of priority:

- (1) plans of care for individuals moved from nursing homes into community settings under the HCBS;
- (2) maintaining individuals in assisted living facilities and others in the community who are at immediate risk of nursing home placement;
- (3) medicaid nursing home bed days in the event bed days costs are underfunded as of July 1 of each year.

County Nursing Home Intergovernmental Transfer (IGT) may be used as one-time-only payments to nursing homes based on the number of medicaid services provided. State special revenue in County Nursing Home IGT may be expended only after the office of budget and program planning has certified that the department has collected from participating counties the amount necessary to make one-time-only payments to nursing homes and to fund the base budget in the nursing facility program and the community services program at the level of \$564,785 state special revenue each year of the biennium and \$1,105,682 federal funds in FY 2012 and \$1,083,741 in FY 2013.

	Fiscal 2012			Fiscal 2013		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
		Proprietary	Other	Total	Proprietary	Other
				Total		Total
Direct Care Provider Rate Increase may be used only to raise provider rates for medicaid services to allow for wage increases or lump-sum payments to workers who provide direct care and ancillary services.						
Federal special revenue appropriated to the department of public health and human services may be allocated among programs when developing 2013 biennial operating plans.						
Disability Services Division, Senior and Long-Term Care Division, and Addictive and Mental Disorders Division do not include present law adjustments for non-department of administration rent increases for the department of public health and human services for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of public health and human services' leases for office space and that the department of public health and human services either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).						
If the Addictive and Mental Disorders Division is unable to secure a federal grant to support the suicide prevention coordination position, the division may use other funds available from the appropriations for the Addictive and Mental Disorders Division to fund the position.						
TOTAL SECTION B	413,680,940	152,252,185	1,307,237,078	0	1,873,170,203	423,718,355
				154,881,443	1,334,562,584	0
				0	0	1,913,162,382

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
C. NATURAL RESOURCES AND TRANSPORTATION							
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)							
1. Information Services Division (01)	0	4,496,449	10,693	0	4,497,052	10,693	4,507,745
2. Fisheries Division (03)	0	5,739,849	8,458,445	0	5,744,336	8,473,817	14,218,153
a. Reinstated Aquatic Nuisance Species (Restricted)	0	13,750	41,250	0	13,750	41,250	55,000
b. Reinstated Private Fishing Land Access (OTO)	0	10,000	0	0	10,000	0	10,000
c. Increase Aquatic Nuisance Species (Restricted)	0	100,000	0	0	100,000	0	100,000
3. Law Enforcement Division (04)	0	9,207,916	387,486	0	9,210,376	387,999	9,598,375
4. Wildlife Division (05)	0	11,672,968	5,470,689	0	11,677,297	5,476,490	17,153,787
a. Reinstated Game Damage Herders (OTO)	0	11,500	0	0	11,500	0	11,500
b. Restore Auction Programs (OTO)	0	184,800	0	0	184,800	0	184,800
c. Restore Migratory Bird Program (OTO)	0	40,000	0	0	40,000	0	40,000
e. Reinstated Block Management (OTO)	0	850,000	0	0	850,000	0	850,000
f. Implementation of HB 363 (Restricted)	0	162,500	0	0	162,500	0	162,500
g. Upland Game Bird Program							

	Fiscal 2012				Fiscal 2013			
	General Fund	State Special Revenue	Federal Special Revenue	Total	General Fund	State Special Revenue	Federal Special Revenue	Total
	0	149,834	132,560	282,394	0	149,065	133,000	282,065
h. Grizzly Bear DNA Study (Restricted/OTO)	0	150,000	0	150,000	0	150,000	0	150,000
5. Parks Division (06)	0	9,168,004	365,857	9,533,861	0	9,173,832	364,432	9,538,264
a. Restore Grants Administration Funding (OTO)	0	85,000	0	85,000	0	85,000	0	85,000
b. Snowmobile Groomers (Restricted/Biennial)	0	210,000	0	210,000	0	210,000	0	210,000
c. Fund FAS Management in Parks (Restricted)	0	172,500	0	172,500	0	172,500	0	172,500
d. Redirected Plate Fee (Restricted)	0	160,000	0	160,000	0	160,000	0	160,000
6. Communication and Education Division (08)	0	2,916,800	736,802	3,653,602	0	2,918,331	736,187	3,654,518
a. MT Outdoor Discover Center Educational Grants (Restricted)	0	25,000	0	25,000	0	25,000	0	25,000
7. Management and Finance (09)	0	8,838,533	58,553	8,897,086	0	8,877,622	57,607	8,935,229
a. Legislative Audit (Restricted/Biennial)	0	85,473	15,083	100,556	0	0	0	0
b. Legal Unit Workload Efforts (Restricted)	0	50,164	0	50,164	0	50,043	0	50,043
c. Calculate Sustainable Yield (Restricted/Biennial/OTO)	0	339,676	0	339,676	0	339,676	0	339,676
8. Fish and Wildlife Admin (12)	0	3,520,914	169,398	3,690,312	0	3,520,749	169,591	3,690,340

	Fiscal 2012			Fiscal 2013		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
548,197	468,970	371,914	0	1,389,081	468,717	371,725
4. Remediation Division (40)	0	5,761,840	6,136,245	0	11,898,085	0
a. S&W Claims Payment (Restricted/Biennial/OTO)	0	750,000	0	750,000	0	0
b. GO Bond Sales NPL Sites (Restricted/Biennial/OTO)	0	1,100,000	0	1,100,000	0	0
5. Permitting and Compliance Division (50)	1,040,010	16,185,125	6,880,461	0	24,105,596	0
a. Hard Rock and Major Facility Siting (Restricted/Biennial)	0	1,750,000	0	1,750,000	0	0
b. SB 206 — Energy Transmission Siting	0	613,386	0	613,386	0	0
6. Petroleum Tank Release Compensation Board (90)	0	703,761	0	703,761	0	0
Total	4,587,537	31,240,039	21,384,108	0	57,211,684	21,373,982

Central Management Program includes a reduction in general fund money of \$4,454 in FY 2012 and \$4,436 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

The department is authorized to decrease federal special revenue in the water pollution control and/or drinking water revolving loan programs and to increase state special revenue by a like amount within the administration account when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes.

If House Bill No. 610 is not passed and approved in a form that raises the public water supply connection fee, then the general fund appropriation in the Permitting and Compliance Division is increased by \$697,350 in FY 2012 and FY 2013 and the state special revenue is increased by \$151,733 in FY 2012 and \$144,216 in FY 2013.

SB 206 — Energy Transmission Siting is contingent upon passage and approval of Senate Bill No. 206.

	Fiscal 2012			Fiscal 2013			Total	
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue		
1. General Operations Program (01) (Biennial)	0	23,807,299	2,224,010	0	23,807,219	2,144,187	0	25,951,406
a. Legislative Audit (Restricted/Biennial)	0	165,200	0	0	0	0	0	0
2. Construction Program (02) (Biennial)	0	78,293,634	390,654,635	0	80,423,835	408,617,204	0	489,041,039
3. Maintenance Program (03) (Biennial)	0	128,260,741	7,587,383	0	128,600,488	7,587,383	0	136,187,871
a. State Funded Construction Program (OTO)	0	15,000,000	0	0	15,000,000	0	0	15,000,000
b. Tongue River Road Preconstruction (Restricted/Biennial)	0	2,500,000	0	0	2,500,000	0	0	2,500,000
4. Motor Carrier Services Division (22)	0	8,280,002	3,182,695	0	7,788,221	2,627,050	0	10,415,271
a. Digital Audio/Video Recorders (OTO)	0	170,000	0	0	0	0	0	0
5. Aeronautics Program (40)	0	824,466	312,355	0	824,526	312,424	0	1,136,950
a. Grants, Loans, and Pavement Prevention (Biennial)	0	910,000	0	0	910,000	0	0	910,000
b. Aeronautical Maps and Charts (OTO)	0	0	0	0	46,000	0	0	46,000
c. State Aviation System Plan (Biennial)	0	3,700	142,500	0	3,700	142,500	0	146,200

The department is appropriated up to \$500,000 for the 2013 biennium of the funds recovered under the petroleum tank compensation board subrogation program in the 2011 biennium for the purpose of paying contract expenses related to the recovery of funds.

DEPARTMENT OF TRANSPORTATION (5401)

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
6. Rail, Transit, & Planning Division (50) (Biennial)	0	4,625,861	21,802,717	0	4,632,214	21,794,576	26,426,790
a. Emergency Medical Services Grants (Biennial)	0	1,000,000	0	0	1,000,000	0	1,000,000
b. Rail Service Competition Council (Restricted)	0	50,000	0	0	50,000	0	50,000
c. Biodiesel Fuel Research (Restricted/Biennial/OTO)	0	200,000	0	0	200,000	0	200,000
Total	0	264,090,903	425,906,295	0	265,786,203	443,225,324	709,011,527

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program.

All federal special revenue appropriations in the department are biennial.

All appropriations in the general operations, construction, maintenance, and transportation planning programs are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions for the 2011 biennium, are authorized to continue and are appropriated in fiscal year 2012 and fiscal year 2013.

Tongue River Road Preconstruction funds may be used only to survey and provide design and preliminary engineering work to improve state secondary highway 332.

Biodiesel Fuel Research may be used only to provide grants to Montana state university-northern to test and develop biodiesel and related technology in support of Montana agriculture, refining, transportation, and other related emerging industries.

DEPARTMENT OF LIVESTOCK (5603)

1. Centralized Services Program (01)	0	1,876,446	0	0	1,884,166	0	1,884,166
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	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
2. Diagnostic Laboratory Program (03)	248,807	1,650,825	0	248,937	1,655,799	0	1,904,736
a. Equipment Replacement (OTO)	0	17,000	0	0	0	0	0
b. New Lab Equipment (Biennial/OTO)	0	17,750	29,000	0	0	0	0
3. Animal Health Division (04)	0	740,224	842,747	0	742,769	844,508	1,587,277
a. Vehicle Replacement (OTO)	0	0	0	0	26,000	0	26,000
b. Brucellosis DSA (OTO)	215,821	215,821	0	215,821	215,821	0	431,642
c. Brucellosis Vet & Compliance Specialist (OTO)	65,945	65,946	0	65,782	65,783	0	131,565
4. Milk and Egg Program (05)	0	449,921	28,488	0	451,893	28,488	480,381
a. Vehicle Replacement (OTO)	0	26,000	0	0	26,000	0	26,000
5. Brands Enforcement Division (06)	2,943	3,223,616	0	2,943	3,229,795	0	3,232,738
6. Meat and Poultry Inspection Program (10)	614,033	5,717	615,341	614,184	5,717	615,492	1,235,393
Total	1,147,549	8,325,179	1,515,576	1,147,667	8,303,743	1,488,488	10,939,898

	Fiscal 2012				Fiscal 2013				
	General Fund	State Special Revenue	Federal Special Revenue	Total	General Fund	State Special Revenue	Federal Special Revenue	Total	
1. Centralized Services (21)									
2,466,858	686,226	245,776	0	3,398,860	2,501,390	694,637	249,941	0	3,445,968
a. Legislative Audit (Restricted/Biennial)									
125,695	0	0	0	125,695	0	0	0	0	0
2. Oil and Gas Conservation Division (22)									
0	2,093,325	107,551	0	2,200,876	0	2,097,212	107,551	0	2,204,763
a. EPA Primacy for CO2 (Restricted/Biennial/OTO)									
0	250,000	0	0	250,000	0	250,000	0	0	250,000
b. Educational Funding (Restricted/Biennial)									
0	1,500,000	0	0	1,500,000	0	1,500,000	0	0	1,500,000
3. Conservation and Resource Development Division (23)									
982,461	3,650,348	310,603	0	4,943,412	988,412	3,643,354	319,753	0	4,951,519
a. Drinking Water Loan Assistance (Restricted/OTO)									
0	200,000	0	0	200,000	0	200,000	0	0	200,000
b. Montana Rural Water (OTO)									
0	103,000	0	0	103,000	0	103,000	0	0	103,000
4. Water Resources Division (24)									

If House Bill No. 610 is not passed and approved in a form that provides for the implementation of an increase in the livestock per capita fee, then the Centralized Services Program is appropriated an additional \$70,215 general fund in FY 2012 and \$70,100 general fund in FY 2013 and the Diagnostic Lab Program is appropriated an additional \$54,785 general fund in FY 2012 and \$54,900 general fund in FY 2013.

Diagnostic Laboratory Program includes a reduction in general fund money of \$1,705 in FY 2012 and \$1,698 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

In the event that the department experiences extended staff absences and is unable to meet service levels required to maintain AAVID accreditation standards or peak workload demand, the department may hire additional temporary employees or pay overtime, whichever is determined to be the most cost-effective, to maintain service levels. The department is appropriated not more than \$30,000 as a biennial appropriation for additional cost from the state special revenue per capita fee account to meet the service level requirements.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
8,212,104	3,900,220	180,634	0	8,211,634	3,899,974	181,386	12,292,994
5. Reserved Water Rights Compact Commission (25)	565,352	0	0	565,352	0	0	603,882
6. Forestry and Trust Lands (35)	8,512,803	17,915,584	1,204,916	8,581,473	17,917,310	1,194,923	27,693,706
a. Biomass Project (Restricted/Biennial/OTO)	100,000	0	0	100,000	0	0	100,000
b. Lease Payments (OTO)	3,817	0	0	3,817	0	0	3,817
Total	20,969,090	30,298,703	2,049,480	20,990,608	30,305,487	2,053,554	53,349,649

Centralized Services includes a reduction in general fund money of \$54,015 in FY 2012 and \$53,788 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

Education funding is restricted to the uses outlined in 82-11-111(7).

The department is appropriated up to \$600,000 for the 2013 biennium from the natural resources operations account established in 15-38-301 for the purchase of prior liens on property held as loan security as provided in 85-1-615.

The department is appropriated up to \$333,000 for the 2013 biennium from the coal bed methane protection account established in 76-15-904 for potential landowner or water right holder claims for emergency loss of water related to coal bed methane development.

The department is authorized to decrease federal special revenue in the pollution control and/or drinking water revolving fund loan programs and increase state special revenue by a like amount within administration accounts when the amount of federal EPA CAP grant funds allocated for administration of the grant have been expended or federal funds and bond proceeds will be used for other program purposes as authorized in law providing for the distribution of funds.

During the 2013 biennium, up to \$1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing and replacing equipment at the Broadwater hydropower facility.

During the 2013 biennium, up to \$100,000 of interest earned on the Broadwater users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion.

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
	507,976	4,128,784	8,359	507,289	4,128,851	8,359	5,092,259
Total	950,916	11,948,475	2,328,952	902,568	11,647,754	2,329,665	15,456,275

Central Management Division includes a reduction in general fund money of \$1,233 in FY 2012 and \$1,228 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

SB 126 — Ag Inspection Fees is contingent upon passage and approval of Senate Bill No. 126.

TOTAL SECTION C	
27,655,092	920,150,040

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
JUDICIARY (2110)							
D. JUDICIAL BRANCH, LAW ENFORCEMENT, AND JUSTICE							
1. Supreme Court Operations (01)							
8,875,990	190,669	122,932	0	9,189,591	190,669	122,989	0
a. Legislative Audit (Restricted/Biennial)							
46,687	0	0	0	46,687	0	0	0
b. Court Help Program (Restricted/Biennial/OTO)							
295,927	0	0	0	295,927	0	0	0
2. Boards and Commissions (02)							
265,170	73,934	0	0	339,104	74,167	0	0
a. Judicial Standards (Restricted/Biennial)							
19,143	0	0	0	19,143	0	0	0
3. Law Library (03)							
845,680	0	0	0	845,680	0	0	0
4. District Court Operations (04)							
25,013,770	227,078	0	0	25,240,848	227,365	0	0
a. Guardian Ad Litem (OTO)							
70,000	0	0	0	70,000	0	0	0
5. Water Courts Supervision (05)							
0	1,636,329	0	0	1,636,329	0	0	0
6. Clerk of Court (06)							
481,665	0	0	0	481,665	0	0	0
Total							
35,914,032	2,128,010	122,932	0	38,164,974	2,386,679	122,989	0

District Court Operations includes a reduction in general fund money of \$37,906 in FY 2012 and \$37,747 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
If House Bill No. 587 is not passed and approved, state special revenue funding in Water Courts Supervision is reduced by \$200,000 in FY 2013.							
CRIME CONTROL DIVISION (4107)							
1. Justice System Support Service (01)							
1,265,516	12,847	719,623	0	1,997,986	1,263,347	723,283	0
a. Pass-Through Grants (Biennial)							
0	139,236	5,945,898	0	6,085,134	0	5,945,898	0
b. Juvenile Detention (Restricted/Biennial)							
931,923	0	0	0	931,923	931,923	0	0
Total	2,197,439	152,083	6,665,521	9,015,043	2,195,270	6,669,181	0

The appropriation for Justice System Support Service is increased by \$67,630 in general fund money, \$200 state special revenue, and \$19,378 in federal funds in fiscal year 2012 and \$67,980 in general fund money, \$201 state special revenue, and \$19,478 in federal funds in fiscal year 2013 if House Bill No. 230 is not passed and approved.

Funding in Juvenile Detention may be used only for payments to counties for juvenile detention costs.

All pass-through grant authority is biennial. All remaining pass-through grant appropriations, up to \$100,000 in general fund money, \$180,000 in state special revenue, and \$7 million in federal funds, including reversions, for the 2011 biennium are authorized to continue and are appropriated in fiscal year 2012 and fiscal year 2013.

DEPARTMENT OF JUSTICE (4110)							
1. Legal Services Division (01)							
4,803,242	209,853	623,320	0	5,636,415	4,798,663	623,041	0
a. Major Litigation (Restricted)							
767,377	0	0	0	767,377	767,379	0	0
2. Office of Consumer Protection (02)							
0	861,226	0	0	861,226	0	0	0

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
3. Gambling Control Division (07)							
a. IT Web Entry (Biennial/OTO)	0	2,876,313	0	0	2,877,834	0	4,111,122
b. Motor Vehicle Division (12)	0	50,000	0	0	0	0	0
c. MVD Base Adjustments (OTO)	7,513,412	8,850,648	0	7,511,729	8,848,414	0	16,974,858
d. MVD Debt Payment to BOI (Biennial)	54,363	36,242	0	12,000	8,000	0	20,000
e. Highway Patrol Division (13)	0	1,850,000	0	0	1,850,000	0	1,850,000
f. Division of Criminal Investigation (18)	0	31,900,700	0	0	31,709,494	0	31,709,494
g. DCI Legal Assistance (Restricted)	5,644,472	3,096,052	866,243	6,033,196	3,095,269	867,952	9,996,417
h. Criminal Justice Info Network (Biennial/OTO)	0	0	0	100,000	0	0	100,000
i. Central Services Division (28)	0	575,000	0	0	575,000	0	575,000
j. Legislative Audit (Restricted/Biennial)	506,208	781,491	0	508,037	778,568	0	1,363,953
k. Information Technology Services Division (29)	29,664	38,140	0	0	0	0	0
l. Forensic Sciences Division (32)	3,492,298	133,730	2,505	3,489,288	133,620	2,502	3,640,221
m. FSD Equipment (OTO)	3,425,666	326,068	0	3,446,649	327,687	0	3,774,336
n. FSD Equipment (OTO)	150,000	0	0	150,000	0	0	150,000

	Fiscal 2012			Fiscal 2013			Total					
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue						
Total	26,389,702	51,585,463	1,492,068	2,294,126	0	81,761,359	26,816,941	51,273,282	1,493,495	1,940,162	0	81,523,880
Division of Criminal Investigation includes a reduction in general fund money of \$38,584 in FY 2012 and \$38,422 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.												
Funding in DCI Legal Assistance may be used only for contracted legal services in support of the Child Sexual Predator Unit and Prescription Drug Diversion Enforcement Unit.												
PUBLIC SERVICE COMMISSION (4201)												
1. Public Service Regulation Program (01)	0	3,572,375	106,511	0	0	3,678,886	0	3,577,734	105,434	0	0	3,683,168
a. Legislative Audit (Restricted/Biennial)	0	22,984	0	0	0	22,984	0	0	0	0	0	0
Total	0	3,595,359	106,511	0	0	3,701,870	0	3,577,734	105,434	0	0	3,683,168
OFFICE OF STATE PUBLIC DEFENDER (6108)												
1. Office of State Public Defender (01) (Biennial)	21,041,412	100,000	0	0	0	21,141,412	21,058,747	75,000	0	0	0	21,133,747
a. Legislative Audit (Restricted/Biennial)	57,461	0	0	0	0	57,461	0	0	0	0	0	0
b. Office of Public Defender (Restricted/OTO)	300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000
c. Death Penalty Cases (Restricted/Biennial/OTO)	500,000	0	0	0	0	500,000	400,000	0	0	0	0	400,000
d. SB 15 — Misdemeanor Aggravated DUI	85,500	0	0	0	0	85,500	85,500	0	0	0	0	85,500

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
e. SB 187 — Revise Public Defender Laws	0	0	0	0	111,144	0	111,144
2. Office of Appellate Defender (02) (Biennial)	964,641	0	0	964,140	0	0	964,140
Total	22,949,014	100,000	0	23,049,014	186,144	0	22,994,531
Funding in Office of Public Defender may be used only to support contracted services or replacement of computers, servers, or copiers.							
Office of State Public Defender includes a reduction in general fund money of \$11,475 in FY 2012 and \$11,426 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.							
Death Penalty Cases is restricted for the purpose of death penalty case costs until September 1, 2012. After September 1, 2012, any remaining funds available for the appropriation may be used for any purpose consistent with the mission of the agency.							
SB 15 — Misdemeanor Aggravated DUI is contingent on passage and approval of Senate Bill No. 15.							
SB 187 — Revise Public Defender Laws is contingent on passage and approval of Senate Bill No. 187.							
DEPARTMENT OF CORRECTIONS (6401)							
1. Administrative and Support Services (01) (Biennial)	15,863,592	511,965	0	15,879,109	505,609	0	16,481,514
a. Legislative Audit (Restricted/Biennial)	111,330	0	0	111,330	0	0	0
b. Victim Information and Notification (OTO)	34,790	0	0	34,790	19,790	0	19,790
2. Adult Community Corrections (02) (Biennial)	60,113,406	1,267,521	0	61,380,927	1,264,733	0	61,618,906
3. Secure Custody Facilities (03) (Biennial)	73,535,468	129,168	9,173	73,673,809	73,588,148	129,168	73,726,489

	Fiscal 2012			Fiscal 2013			Total	Other	Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue			
a. Secure Care Population Growth (Restricted)	0	0	0	2,979,130	0	0	0	0	2,979,130
b. Security Control System (Biennial/OTO)	125,000	0	0	125,000	0	0	0	0	125,000
c. Educational Cost Person Exonerated per 53-1-.214, MCA (Restricted/OTO)	14,500	0	0	0	0	0	0	0	0
d. MSP Equipment (Biennial/OTO)	37,500	0	0	37,500	0	0	0	0	37,500
4. Montana Correctional Enterprises (04) (Biennial)	793,181	1,994,778	0	792,600	1,994,571	0	592,358	0	3,379,529
5. Youth Services (05) (Biennial)	17,514,287	852,092	11,699	17,529,910	852,878	11,699	0	0	18,394,487
a. Juvenile Reentry Services (Restricted)	607,800	0	0	607,800	0	0	0	0	607,800
b. RYCF Security Cameras (Biennial/OTO)	37,500	0	0	37,500	0	0	0	0	37,500
Total	168,788,354	4,755,524	20,872	174,254,209	4,746,959	20,872	689,154	0	177,407,645

Administrative and Support Services includes a reduction in general fund money of \$316,471 in FY 2012 and \$315,140 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

Secure Custody Facilities includes \$18,000 of general fund money in fiscal year 2012 and \$10,000 of general fund money in fiscal year 2013 that is contingent upon the Montana state prison receiving national commission on correctional health care accreditation prior to the end of fiscal year 2011.

Secure Custody Facilities includes \$200,750 general fund money each year that may be used only to support an increase in rates for privately owned secure prison facility beds located within Montana.

Funding in Secure Care Population Growth may be used only to support secure assisted living beds and secure contract beds.

	Fiscal 2012			Fiscal 2013			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
E. EDUCATION							
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)							
1. OPI Administration (06)							
8,723,328	236,503	18,357,310	0	27,317,141	8,728,746	236,692	25,107,284
a. National Student Clearinghouse (Restricted)							
7,600	0	0	0	7,600	7,600	0	7,600
b. Montana Digital Academy (Restricted)							
1,168,000	0	0	0	1,168,000	1,168,000	0	1,168,000
2. Distribution to Public Schools (09)							
0	0	139,400,673	0	139,400,673	0	0	143,050,673
a. BASE Aid (Restricted/Biennial)							
485,441,752	0	0	0	485,441,752	526,495,288	0	526,495,288
b. Special Education (Restricted/Biennial)							
41,647,331	0	0	0	41,647,331	41,647,331	0	41,647,331
c. Transportation (Restricted/Biennial)							
12,621,927	0	0	0	12,621,927	12,721,927	0	12,721,927
d. School Facility Reimbursement (Restricted/Biennial)							
0	8,586,000	0	0	8,586,000	0	8,586,000	8,586,000
e. School Food (Restricted/Biennial)							
663,861	0	0	0	663,861	676,386	0	676,386
f. HB 124 Block Grants (Restricted/Biennial)							
52,150,510	0	0	0	52,150,510	52,150,510	0	52,150,510
g. State Tuition Payments (Restricted/Biennial)							
639,308	0	0	0	639,308	639,308	0	639,308
h. Advancing Agricultural Ed in Montana (Restricted/Biennial)							
128,957	0	0	0	128,957	128,960	0	128,960
i. Traffic Safety Distribution (Restricted/Biennial)							

	Fiscal 2012			Fiscal 2013		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
	0	750,000	0	0	750,000	0
j. At-Risk Student Payment (Restricted/Biennial)	5,000,000	0	0	5,000,000	0	0
k. In-State Treatment (Restricted/Biennial)	787,800	0	0	787,800	0	0
l. Secondary Vo-ed (Restricted/Biennial)	1,000,000	0	0	1,000,000	0	0
m. Adult Basic Education (Restricted/Biennial)	525,000	0	0	525,000	0	0
n. Gifted and Talented (Restricted/Biennial)	250,000	0	0	250,000	0	0
o. Multidistrict Cooperatives (Restricted/Biennial/OTO)	1,000,000	0	0	1,000,000	0	0
Total	611,755,374	9,572,503	157,757,983	779,085,860	9,572,692	159,192,519

OPI Administration includes a reduction in general fund money of \$9,902 in FY 2012 and \$9,860 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

All revenue up to \$1.1 million in FY 2012 and \$1.1 million in FY 2013 in the traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

All appropriations for federal special revenue programs in state level activities and in local education activities and all general fund appropriations in local educational activities are biennial.

If a bill that eliminates the growth in HB 124 block grants is not passed and approved, HB 124 Block Grants is increased by \$396,344 general fund in FY 2012 and by \$795,700 general fund in FY 2013.

The general fund appropriation for BASE Aid is increased by \$5,647,742 in FY 2012 and is decreased by \$7,589,936 in FY 2013 if Senate Bill No. 329 is not passed and approved in a form that:

	Fiscal 2012			Fiscal 2013		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
(1) provides for an inflation factor for basic and total per-ANB entitlements of at least 1.0% in FY 2012 and at least 2.43% in FY 2013; and						
(2) allocates revenue from school districts' excess oil and natural gas production taxes to the state special revenue guarantee account provided for in 20-9-622. For the purpose of this subsection (2), excess oil and natural gas production taxes means revenue in excess of 130% of a school district's maximum budget.						
The office of public instruction may distribute funds from the appropriation for In-State Treatment to public school districts for the purpose of providing for educational costs of children with significant behavioral or physical needs.						
Multidistrict Cooperatives is contingent on passage and approval of Senate Bill No. 329.						
Advancing Agricultural Ed in Montana is contingent on passage and approval of House Bill No. 611.						
BOARD OF PUBLIC EDUCATION (5101)						
1. Administration (01)	216,664	187,920	0	404,584	222,033	188,322
Total	216,664	187,920	0	404,584	222,033	188,322
SCHOOL FOR THE DEAF AND BLIND (5113)						
1. Administration Program (01)	444,245	3,758	0	448,003	443,981	3,946
a. Legislative Audit (Restrictive/Biennial)	37,709	0	0	37,709	0	0
2. General Services Program (02)	454,393	0	0	454,393	455,168	0
3. Student Services (03)	1,385,289	0	15,393	1,400,682	1,386,513	15,393
4. Education (04)	3,676,141	283,115	48,522	4,007,778	3,679,232	283,115
Total	4,978,032	291,673	63,915	5,333,620	4,968,804	348,522

	Fiscal 2012			Fiscal 2013		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
Total	5,997,777	286,873	63,915	0	6,348,565	5,964,894
Administration Program includes a reduction in general fund money of \$12,340 in FY 2012 and \$12,288 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.						
MONTANA ARTS COUNCIL (5114)						
1. Promotion of the Arts (01)						
432,933	204,342	3,817	0	0	641,092	444,883
a. Legislative Audit (Restricted/Biennial)						
21,548	0	0	0	0	21,548	0
b. Federal Funds (Biennial)						
0	0	798,296	0	0	798,672	0
Total	454,481	204,342	802,113	0	1,460,936	444,883
MONTANA STATE LIBRARY COMMISSION (5115)						
1. Statewide Library Resources (01)						
2,527,879	763,323	408,026	0	0	3,699,228	2,533,782
a. Legislative Audit (Restricted/Biennial)						
21,548	0	0	0	0	21,548	0
b. LSTA and State Share (Restricted/Biennial)						
102,830	0	1,200,000	0	0	1,302,830	102,830
c. Continuing Education and Certification (Biennial/OTO)						
0	3,600	0	0	0	3,600	0
Total	2,652,257	766,923	1,608,026	0	5,027,206	2,636,612

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	Fiscal 2012				Fiscal 2013						
	General Fund	State Special Revenue	Federal Special Revenue	Total	General Fund	State Special Revenue	Federal Special Revenue	Total			
MONTANA HISTORICAL SOCIETY (5117)											
1. Administration Program (01)											
909,173	90,408	100,818	359,552	0	1,459,951	915,826	90,408	100,818	359,552	0	1,466,604
a. Legislative Audit (Restricted/Biennial)											
39,504	0	0	0	0	39,504	0	0	0	0	0	0
b. HB 477 — Historical Interpretation and Scriver Collection Costs											
0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
2. Research Center (02)											
1,034,862	0	0	69,654	0	1,104,516	1,036,075	0	0	69,654	0	1,105,729
a. HB 477 — Historical Interpretation and Scriver Collection Costs											
0	65,000	0	0	0	65,000	0	65,000	0	0	0	65,000
3. Museum Program (03)											
444,524	674	0	12,631	0	457,829	444,362	674	0	12,631	0	457,667
a. Care and Conservation of Artifacts (Restricted/Biennial)											
95,000	0	0	0	0	95,000	0	0	0	0	0	0
b. HB 477 — Historical Interpretation and Scriver Collection Costs											
0	297,036	0	0	0	297,036	0	305,518	0	0	0	305,518
4. Publications (04)											
140,047	0	0	300,082	0	440,129	141,826	0	0	298,669	0	440,495
5. Education Program (05)											
285,881	0	0	34,077	0	319,958	285,754	0	0	34,077	0	319,831
a. HB 477 — Historical Interpretation and Scriver Collection Costs											
0	89,500	0	0	0	89,500	0	95,231	0	0	0	95,231
6. Historic Preservation Program (06)											
29,046	0	659,800	16,687	0	705,533	32,252	0	664,500	16,687	0	713,439
Total											

	Fiscal 2012				Fiscal 2013			
	General Fund	State Special Revenue	Federal Special Revenue	Total	General Fund	State Special Revenue	Federal Special Revenue	Total
12,455,424	0	0	0	12,455,424	12,506,141	0	0	12,506,141
c. Extension Service								
5,338,715	0	0	0	5,338,715	5,339,571	0	0	5,339,571
d. Forest and Conservation Experiment Station								
1,011,216	0	0	0	1,011,216	1,012,592	0	0	1,012,592
e. Bureau of Mines and Geology								
3,356,185	841,886	0	0	4,198,071	3,357,538	841,886	0	4,199,424
f. Fire Services Training School								
737,849	0	0	0	737,849	739,112	0	0	739,112
g. Educational Units (Restricted/Biennial/OTO)								
4,855,152	0	0	0	4,855,152	4,380,153	0	0	4,380,153
h. MUS Research (Restricted/Biennial/OTO)								
1,500,000	0	0	0	1,500,000	2,000,000	0	0	2,000,000
i. PBS (Restricted)								
150,000	0	0	0	150,000	150,000	0	0	150,000
8. Tribal College Assistance Program (11) (Biennial)								
842,085	0	0	0	842,085	842,085	0	0	842,085
9. OCHE — Guaranteed Student Loan Program (12)								
0	0	38,107,073	0	38,107,073	0	0	44,613,630	44,613,630
a. Legislative Audit (Restricted/Biennial)								
0	0	14,365	0	14,365	0	0	0	0
10. OCHE — Board of Regents (13)								
45,737	0	0	0	45,737	45,737	0	0	45,737
Total								
186,265,852	19,827,019	54,820,663	74,379	260,987,913	185,574,613	21,274,458	60,626,344	267,549,837

Items designated as OCHE—Administration (01), Student Assistance Program (02), Improving Teacher Quality (03), Educational Outreach and Diversity (06), Workforce Development Program (08), Appropriation Distribution Transfers (09) [excluding Agriculture Experiment Station, Extension Service, Forest and

Fiscal 2012				Fiscal 2013			
General Fund	State Special Revenue	Federal Special Revenue	Total	General Fund	State Special Revenue	Federal Special Revenue	Total

Conservation Experiment Station, Bureau of Mines and Geology, and Fire Services Training School], Guaranteed Student Loan Program (12), and Board of Regents (13) are a single biennial lump-sum appropriation.

General fund money, state and federal special revenue, and proprietary fund revenue appropriated to the board of regents are included in all Montana university system programs (5100). All other public funds received by units of the Montana university system (other than plant funds appropriated in House Bill No. 5, relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The Montana university system shall provide the electronic data required for human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

The variable cost of education for each full-time equivalent student at the community colleges, including Summitnet, is \$1,872 each year of the 2013 biennium. The general fund appropriation for OCHE—Community College Assistance (04) provides 50.8% of the fixed costs of education plus 50.8% of the variable cost of education for each full-time equivalent student in fiscal year 2012 and 50.8% of the fixed cost of education plus 50.8% of the variable costs of education for each full-time equivalent student in fiscal year 2013. The remaining percentage of the budget must be paid from funds other than those appropriated for OCHE—Community College Assistance.

The general fund appropriation for OCHE—Community College Assistance (04) is calculated to fund education in the community colleges for an estimated 2,858 resident FTE students in fiscal year 2012 and 2,808 resident FTE students in fiscal year 2013. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the community colleges shall revert general fund money to the state in accordance with 17-7-142.

Total audit costs are estimated to be \$120,700 for the community colleges for the biennium. The general fund appropriation for each community college provides 50.8% of the total audit costs in the 2013 biennium. The remaining 49.2% of these costs must be paid from funds other than those appropriated for OCHE—Community College Assistance. Audit costs for the biennium may not exceed \$38,900 for Dawson, \$38,900 for Miles, and \$42,900 for Flathead Valley community college.

Revenue anticipated to be received by the Montana university system units and colleges of technology include interest earnings and other revenue of \$897,834 for fiscal year 2012 and \$898,509 for fiscal year 2013. These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in OCHE—Appropriation Distribution Transfers.

Section 10. Rates. Internal service fund type fees and charges established by the legislature for the 2013 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
DEPARTMENT OF REVENUE — 5801		
1. Business and Income Taxes Division		
Delinquent Account Collection Fee (percent of amount collected)	5%	5%
DEPARTMENT OF ADMINISTRATION — 6101		
1. Director's Office		
a. Management Services		
Total Allocation of Costs, excluding portion of unit for HR	\$903,354	\$902,951
Portion of Unit for Human Resources Charges Per FTE of User Programs	\$574	\$570
2. State Accounting Division		
a. SABHRS Finance and Budget Bureau		
SABHRS Services Fee (total allocation of costs)	\$3,554,526	\$3,795,313
b. Warrant Writer		
Mailer	\$0.7439	\$0.7446
Nonmailer	\$0.2839	\$0.2846
Emergency	\$14.1129	\$14.1136
Duplicates	\$3.3542	\$3.3549
Externals		
Externals - Payroll	\$0.2051	\$0.2124
Externals - Other	\$0.1386	\$0.1391
Direct Deposit		
Direct Deposit - Mailer	\$0.8186	\$0.8291
Direct Deposit - No Advice Printed	\$0.1386	\$0.1391
Unemployment Insurance		
Mailer - Print Only	\$0.1453	\$0.1456
Direct Deposit - No Advice Printed	\$0.0477	\$0.0478
3. General Services Division		
a. Facilities Management Bureau		
Office Rent (per sq. ft.)	\$8.412	\$8.460
Warehouse Rent (per sq. ft.)	\$4.844	\$4.876
Grounds Maintenance (per sq. ft)	\$0.494	\$0.494
Project Management - In-house	15%	15%
Project Management - contracted	5%	5%
<p>\$2,392,500 of revenue collected related to Facilities Management rates is to be deposited into a state special revenue fund. These types of projects are appropriated in House Bill No. 5 for major maintenance projects on the capitol complex.</p>		
b. Print and Mail Services		
Internal Printing		
Impression Cost		
1-20	\$0.0762	\$0.0762
21-100	\$0.0336	\$0.0336

	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
101-1000	\$0.0193	\$0.0193
1001-5000	\$0.0078	\$0.0078
5000+	\$0.0039	\$0.0039
Color Copy		
8 ½ x 11	\$0.25	\$0.25
11 x 17	\$0.50	\$0.50
Ink		
Black per Sheet	\$0.0002	\$0.0002
Color	\$15.00	\$15.00
Special Mix	\$25.00	\$25.00
Large Format Color per ft.	\$12.70	\$12.70
Collating Machine	\$0.0072	\$0.0072
Collating Hand	\$0.60	\$0.60
Stapling Hand	\$0.018	\$0.018
Stapling In-line	\$0.012	\$0.012
Saddle Stitch	\$0.036	\$0.036
Folding (base + per sheet)	\$12.00 + \$0.006	\$12.00 + 0.006
Folding Rt Angle (base + per sheet)	\$12.00 + \$0.006	\$12.00 + 0.006
Folding In-line	\$0.036	\$0.036
Punching Standard 3-hole	\$0.0012	\$0.0012
Punching Nonstandard (base + per sheet)	\$3.60 + \$0.0012	\$3.60 + 0.0012
Cutting	\$0.66	\$0.66
Padding	\$0.0024	\$0.0024
Scoring, perf, num (setup + duplicating rate)	\$6.00 + Dup Rate	\$6.00 + Dup Rate
Perfect Binding (setup + per sheet)	\$18.00 + \$0.66	\$18.00 + \$0.66
Spiral Binding	\$0.69	\$0.69
Laminating		
8 ½ x 11	\$0.57	\$0.57
11 x 17	\$0.85	\$0.85
Tape Binding	\$0.60	\$0.60
Tabs	\$0.60	\$0.60
Transparencies	\$0.60	\$0.60
Shrink Wrapping	\$0.30	\$0.30
Hand Work Production	\$0.60	\$0.60
Overtime	\$22.15	\$22.15
Desktop	\$46.36	\$46.36
Scan	\$9.52	\$9.52
Proof	\$0.25	\$0.25
Programming	\$45.46	\$45.46
File Transfer	\$22.73	\$22.73
Variable Data	\$0.009	\$0.009
Mainframe Printing	\$0.069	\$0.069
CD Duplicating	\$1.75	\$1.75

	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
DVD Duplicating	\$3.50	\$3.50
Silver Plates		
8 ½ x 11	\$9.20	\$9.20
11 x 17	\$10.35	\$10.35
CTP Plates		
8 ½ x 11	\$9.20	\$9.20
11 x 17	\$10.35	\$10.35
External Printing		
Percent of Invoice markup	6.73%	6.73%
Photocopy Pool		
Percent of Invoice markup	15.9%	15.9%
Mail Preparation		
Tabbing	\$0.021	\$0.021
Labeling	\$0.021	\$0.021
Ink Jet	\$0.034	\$0.034
Inserting	\$0.030	\$0.030
Winsort	\$0.062	\$0.062
Permit Mailings	\$0.062	\$0.062
Mail Operations		
Machinable	\$0.043	\$0.043
Nonmachinable	\$0.080	\$0.080
Seal Only	\$0.020	\$0.020
Postcards	\$0.049	\$0.049
Certified Mail	\$0.614	\$0.614
Registered Mail	\$0.614	\$0.614
International Mail	\$0.400	\$0.400
Flats	\$0.110	\$0.110
Priority	\$0.614	\$0.614
Express Mail	\$0.614	\$0.614
USPS Parcels	\$0.400	\$0.400
Insured Mail	\$0.614	\$0.614
Media Mail	\$0.307	\$0.307
Standard Mail	\$0.200	\$0.200
Postage Due	\$0.061	\$0.061
Fee Due	\$0.061	\$0.061
Tapes	\$0.245	\$0.245
Express Services	\$0.500	\$0.500
Interagency Mail	\$297,657	\$297,657
	yearly	yearly
Postal Contract (Capitol)	\$38,976	\$38,976
	yearly	yearly
c. Central Stores Program		
Markup as a Percentage of Retail Cost of Goods Sold	25%	25%
4. Information Technology Services Division		
a. Enterprise Services	\$6,166,189	\$6,195,048

	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
b. Web Content Management — Sharp Content — Primary Domain — Initial Setup One-time Charge	\$600	\$600
c. Web Content Management — Sharp Content — Subsite — Initial Setup One-Time per Setup per Subsite Domain	\$100	\$100
d. GIS Services — GIS Data Services — BMSC SSITSD Managed per Service per Application per Year	\$350	\$350
e. GIS Services — GIS Data Services — Customer Managed per Service per Year	\$800	\$800
f. GIS Services — Direct Connectivity per Connection	\$3,600	\$3,600
g. Voice Services — Dial Tone (Either)		
i. Per Phone per Year	\$13.37	\$13.19
ii. Per Phone per Month	\$1.11	\$1.10
h. Voice Services — Installation Fee to Add a New Phone or Move an Existing Phone per Phone	\$132.64	\$44.16
i. E-mail — E-mail Mailbox (Either)		
i. Per E-mail Box per Year	\$46.28	\$46.14
ii. Per E-mail Box per Month	\$3.86	\$3.84
Operations for the remaining portion of the division with rates maintained and based upon the financial transparency model	30-Day Working Capital Reserve	
5. Health Care and Benefits Division		
a. Workers' Compensation Management Program Administrative Fee (per payroll warrant per pay period)	\$1.09	\$1.08
6. State Human Resources Division		
a. Intergovernmental Training		
Type of service		
Open enrollment courses		
Two-day course, per participant	188	190
One-day course, per participant	120	123
Half-day course, per participant	93	95
Eight-day management series	565	570
Six-day management series	435	440
Four-day administrative assistant series	330	333
Contract courses		
Full day of training, flat fee	825	830
Half day of training, flat fee	565	570
b. Human Resources Information System Fee		
Per payroll warrant advice per pay period	\$8.06	\$8.10
7. Risk Management & Tort Defense		
Auto Liability, Comprehensive, and Collision (total allocation to agencies)	\$1,135,000	\$1,135,000
Aviation (total allocation to agencies)	\$212,451	\$212,451
General Liability (total allocation to agencies)	\$6,750,000	\$6,750,000
Property/Miscellaneous (total allocations to agencies)	\$4,200,000	\$4,200,000

Fiscal 2012Fiscal 2013**DEPARTMENT OF COMMERCE — 6501**

1. Board of Investments

For the purposes of [this act], the legislature defines “rates” as the total collections necessary to operate the board of investments as follows:

a. Administration Charge (total)	\$4,831,041	\$4,831,041
2. Director’s Office/Management Services		
a. Management Services Indirect Charge Rate		
State	12.95%	12.95%
Federal	12.95%	12.95%

DEPARTMENT OF LABOR AND INDUSTRY — 6602

1. Centralized Services Division

a. Office of Information Technology	\$42 per direct hour of service \$161 a month per active directory	
b. Cost Allocation Plan	8.24%	8.26%
c. Hearing Bureau		
Administrative Law Judge	\$90	\$90
Paralegal	\$50	\$50
d. Office of Legal Services	\$95	\$95

DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201

1. Vehicle and Aircraft Rates

Per Mile Rates		
a. Sedans	\$0.46	\$0.46
b. Vans	\$0.53	\$0.53
c. Utilities	\$0.58	\$0.58
d. Pickup 1/2 ton	\$0.53	\$0.53
e. Pickup 3/4 ton	\$0.61	\$0.61
Per Hour Rates		
f. Two-Place Single Engine	\$108.07	\$108.07
g. Partnavia	\$514.56	\$514.56
h. Turbine Helicopters	\$576.10	\$576.10

2. Duplicating Center

Per Copy		
a. 1-20	\$0.065	\$0.070
b. 21-100	\$0.050	\$0.055
c. 101 - 1,000	\$0.045	\$0.050
d. 1,001- 5,000	\$0.040	\$0.045
e. color copies	\$0.250	\$0.250
Bindery		
a. Collating (per sheet)	\$0.010	\$0.010
b. Hand Stapling (per set)	\$0.020	\$0.020
c. Saddle Stitch (per set)	\$0.035	\$0.035
d. Folding (per set)	\$0.010	\$0.010
e. Punching (per set)	\$0.005	\$0.005
f. Cutting (per minute)	\$0.600	\$0.600

3. Warehouse Overhead Rate

24%	26%
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	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301		
Indirect Rate		
a. Personal Services	24%	24%
b. Operating Expenditures	4%	4%

DEPARTMENT OF TRANSPORTATION — 5401

1. State Motor Pool

In the motor pool program, if the price of gasoline goes above \$3.35, Tier 2 rates may be charged if approved by the Office of Budget and Program Planning. If the price of gasoline goes above \$3.85, Tier 3 rates may be charged if approved by the Office of Budget and Program Planning.

Tier one

a. Class 02 (small utilities)		
Per Hour Assigned	\$1.265	\$1.271
Per Mile Operated	\$0.155	\$0.156
b. Class 03 (hybrid SUV)		
Per Hour Assigned	\$1.685	\$1.689
Per Mile Operated	\$0.101	\$0.101
c. Class 04 (large utilities)		
Per Hour Assigned	\$1.990	\$1.998
Per Mile Operated	\$0.205	\$0.206
d. Class 05 (hybrid sedans)		
Per Hour Assigned	\$1.477	\$1.483
Per Mile Operated	\$0.072	\$0.072
e. Class 06 (midsize compacts)		
Per Hour Assigned	\$1.278	\$1.285
Per Mile Operated	\$0.134	\$0.134
f. Class 07 (small pickups)		
Per Hour Assigned	\$1.343	\$1.348
Per Mile Operated	\$0.200	\$0.201
g. Class 11 (large pickups)		
Per Hour Assigned	\$1.352	\$1.358
Per Mile Operated	\$0.222	\$0.223
h. Class 12 (vans - all types)		
Per Hour Assigned	\$1.283	\$1.289
Per Mile Operated	\$0.183	\$0.184

Tier two (contingent \$3.35/gallon)

a. Class 02 (small utilities)		
Per Hour Assigned	\$1.265	\$1.271
Per Mile Operated	\$0.178	\$0.179
b. Class 03 (hybrid SUV)		
Per Hour Assigned	\$1.685	\$1.689
Per Mile Operated	\$0.116	\$0.117
c. Class 04 (large utilities)		
Per Hour Assigned	\$1.990	\$1.998
Per Mile Operated	\$0.237	\$0.238

	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
d. Class 05 (hybrid sedans)		
Per Hour Assigned	\$1.477	\$1.483
Per Mile Operated	\$0.083	\$0.083
e. Class 06 (midsize compacts)		
Per Hour Assigned	\$1.278	\$1.285
Per Mile Operated	\$0.153	\$0.154
f. Class 07 (small pickups)		
Per Hour Assigned	\$1.343	\$1.348
Per Mile Operated	\$0.229	\$0.230
g. Class 11 (large pickups)		
Per Hour Assigned	\$1.352	\$1.358
Per Mile Operated	\$0.253	\$0.255
h. Class 12 (vans - all types)		
Per Hour Assigned	\$1.283	\$1.289
Per Mile Operated	\$0.210	\$0.211
Tier three (contingent \$3.85/gallon)		
a. Class 02 (small utilities)		
Per Hour Assigned	\$1.265	\$1.271
Per Mile Operated	\$0.201	\$0.202
b. Class 03 (hybrid SUV)		
Per Hour Assigned	\$1.685	\$1.689
Per Mile Operated	\$0.132	\$0.132
c. Class 04 (large utilities)		
Per Hour Assigned	\$1.990	\$1.998
Per Mile Operated	\$0.268	\$0.269
d. Class 05 (hybrid sedans)		
Per Hour Assigned	\$1.477	\$1.483
Per Mile Operated	\$0.094	\$0.094
e. Class 06 (midsize compacts)		
Per Hour Assigned	\$1.278	\$1.285
Per Mile Operated	\$0.172	\$0.173
f. Class 07 (small pickups)		
Per Hour Assigned	\$1.343	\$1.348
Per Mile Operated	\$0.257	\$0.258
g. Class 11 (large pickups)		
Per Hour Assigned	\$1.352	\$1.358
Per Mile Operated	\$0.285	\$0.286
h. Class 12 (vans - all types)		
Per Hour Assigned	\$1.283	\$1.289
Per Mile Operated	\$0.237	\$0.238
2. Equipment Program		
All of Program Operations		60-day working capital reserve

	<u>Fiscal 2012</u>	<u>Fiscal 2013</u>
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706		
1. Air Operations Program		
a. Bell UH-1H	\$1,075	\$1,075
b. Bell Jet Ranger	\$475	\$475
c. Cessna 180 Series	\$150	\$150
DEPARTMENT OF JUSTICE - 4110		
1. Agency Legal Services		
a. Attorney (per hour)	\$93.00	\$93.00
b. Investigator (per hour)	\$53.00	\$53.00
DEPARTMENT OF CORRECTIONS — 6401		
1. Labor Charge for Motor Vehicle Maintenance (per hour)	\$26.50	\$26.50
2. Supply Fee as a Percentage of Actual Costs of Parts	5%	5%
3. Parts	Actual Cost	Actual Cost
4. Cook/Chill Rate		
a. Base Tray Price — Hot/Cold (no delivery)	\$1.73	\$1.73
b. Base Tray Price — Hot	\$0.87	\$0.87
c. Detention Center Trays	\$2.45	\$2.45
d. Accessory Package	\$0.10	\$0.10
5. Delivery Charge Per Mile	\$0.50	\$0.50
6. Delivery Charge Per Hour	\$35.00	\$35.00
7. Bulk Food	Cost	Cost
8. Spoilage Percentage All Customers	5%	5%
9. Overhead Charge		
a. Montana State Hospital	11%	11%
b. Montana State Prison	77%	77%
c. Treasure State Correctional Training Center	12%	12%
10. License Plates - Cost per set	\$6.20	\$6.20
OFFICE OF PUBLIC INSTRUCTION — 3501		
1. OPI Indirect Cost Pool		
a. Unrestricted Rate	17.5%	17.5%
b. Restricted Rate	17%	17%

Approved May 12, 2011

CHAPTER NO. 364

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2012 AND 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program

Judiciary

Supreme Court Operations

State court improvement training program	FY 2011	\$101,517	Federal
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State court improvement data program	FY 2011	\$102,394	Federal
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All remaining fiscal year 2011 federal budget amendment authority for the state court improvement training program and the state court improvement data program is authorized to continue into federal fiscal year 2013.

District Court Operations

All remaining fiscal year 2011 federal budget amendment authority for the Montana case management and offender tracking program is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the 13th Judicial District adult drug court is authorized to continue into federal fiscal year 2013.

Secretary of State

Business and Government Services

2011 help America vote grant	FY 2011	\$48,126	Federal
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Help America vote grant part II	FY 2011	\$350,000	Federal
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All remaining fiscal year 2011 federal budget amendment authority for the help America vote mock election program grant is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the 2011 help America vote grant, the help America vote grant, the help America vote part II grant, and election assistance for individuals with disabilities grant is authorized to continue into federal fiscal year 2013.

Election assistance for individuals

with disabilities	FY 2011	\$100,000	Federal
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State Auditor's Office

Insurance

Consumer assistance program grant	FY 2011	\$149,880	Federal
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All remaining fiscal year 2011 federal budget amendment authority for the consumer assistance program grant is authorized to continue into state fiscal year 2012.

Office of Public Instruction

OPI Administration

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Title II-D

education technology and the Title I-A grants is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for Title I-A improvements is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the school improvement grants program is authorized to continue into federal fiscal year 2013.

Distribution to Public Schools

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for education technology, Title I grants, IDEA part B (section 619 preschool), IDEA — special education, and the McKinney-Vento (homeless assistance) is authorized to continue into state fiscal year 2012.

Department of Justice

Crime Control Division

Justice System Support Service

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the violence against women formula grant program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Harold Rogers prescription drug monitoring program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the crime victims assistance grant program is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Montana sexual assault services program formula grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Byrne/JAG grant is authorized to continue into state fiscal year 2013.

Department of Justice

Legal Services Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the crime victims compensation grant program is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the information networks training enforcement response collaborative efforts develop effectiveness is authorized to continue into federal fiscal year 2012.

Highway Patrol Division

2011 high intensity drug trafficking areas grant	FY 2011	\$6,189	Federal
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All remaining fiscal year 2011 federal budget amendment authority for the 2010 high intensity drug trafficking areas grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Montana labor leaders oral history project, the state and national partnership grant, and the growing baby beef in Montana and ceremonial dances of the Pueblo Indians Preservation Projects is authorized to continue into state fiscal year 2012.

Publications

Montana's last best barns	FY 2011	\$4,000	Federal
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All remaining fiscal year 2011 federal budget amendment authority for Montana's last best barns and the cultural history of Montana weddings grant is authorized to continue into state fiscal year 2012.

Education Program

No ordinary time: war, resistance, and the Montana experience	FY 2011	\$1,500	Federal
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Teaching with a primary impact grant	FY 2011	\$15,000	Federal
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All remaining fiscal year 2011 federal budget amendment authority for no ordinary time: war, resistance, and the Montana experience, the teaching with a primary impact grant, and the richest hills: mining in the far west, 1865-1920 is authorized to continue into state fiscal year 2012.

Historic Preservation Program

Cultural resource annotated bibliography system and the cultural resources information system	FY 2011	\$5,000	Federal
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All remaining fiscal year 2011 federal budget amendment authority for the cultural resources annotated bibliography system and the cultural resources information system is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the preserve America grant program and the bureau of land management data sharing grant is authorized to continue into federal fiscal year 2013.

Department of Fish, Wildlife, and Parks

Fisheries Division

All remaining fiscal year 2011 federal budget amendment authority for the structural analysis on the Chadbourne diversion, the republican canal siphon supplemental grant, the hedge canal siphon supplemental grant, the fish conservation geneticist, the Elkhorn Mountain westslope cutthroat trout recovery program, the Federal Fisheries Restoration and Irrigation Mitigation Act of 2000 inventory, and the Highwood westslope cutthroat trout restoration is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the westslope cutthroat trout restoration in the Helena national forest is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority to restore a fish passage at a railroad culvert on Rock Creek is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the Madison River angler and boat survey, the challenge cost share agreement with the United States forest service, the implementation of the Montana aquatic nuisance species management plan, the westslope cutthroat trout conservation strategy for the Lewis and Clark national forest, the Goose Creek Yellowstone cutthroat trout restoration, the westslope cutthroat trout and Yellowstone cutthroat trout sampling in the Gallatin national forest, the Fort Peck biological

opinion study, the Montana westslope cutthroat trout restoration, and the barriers for Cabin Creek and Leverich Creek is authorized to continue into federal fiscal year 2013.

Law Enforcement Division

All remaining fiscal year 2011 federal budget amendment authority for the forest service turn in poachers Montana program and the bureau of land management turn in poachers Montana public service program is authorized to continue into state fiscal year 2012.

Wildlife Division

All remaining fiscal year 2011 federal budget amendment authority for the grassland bird conservation on working landscapes: spacial analysis linking populations to habitat, to trap, collar, and monitor grizzly bears and their activities on and adjacent to the northern continental divide ecosystem, and for bear conflict management in the Cabinet-Yaak region is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for surveillance for highly pathogenic avian influenza in migratory birds is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the 2008 legacy administration grant, evaluating sage grouse and habitat responses to sage grouse-friendly livestock grazing strategies, the North American waterfowl management plan, the bureau of land management pronghorn study, the wolf management plan, the forest legacy administration, and grizzly bear management assistance in Northwest Montana is authorized to continue into federal fiscal year 2013.

Parks Division

Middle and North Fork Flathead River
weed project

FY 2011 \$13,650 Federal

All remaining fiscal year 2011 federal budget amendment authority for the Middle and North Fork Flathead River weed project, the Blackfoot River recreation management partnership, and the management of commercial, competitive, and organized group activities of the public land and related water resources within the Madison River corridor is authorized to continue into state fiscal year 2012.

Capital Outlay

Pilster wetland restoration and
enhancement

FY 2011 \$75,000 Federal

All remaining fiscal year 2011 federal budget amendment authority for Narrows Creek native fish spawning, the Skelly Gulch fish barrier, the Montana outdoor discovery center development, and the Elkhorn Creek fish barrier is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority to develop and implement fish screen designs is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Pilster wetland restoration and enhancement and the Cherry Creek westslope cutthroat restoration is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the forest service legacy Murray Douglas conservation easement grant, the restoration and conservation work on portions of the Big Hole River watershed,

and restoring genetically pure Yellowstone cutthroat trout to Four Mile Creek is authorized to continue into federal fiscal year 2013.

Management and Finance Division

All remaining fiscal year 2011 federal budget amendment authority for the Blackfoot River easement project is authorized to continue into state fiscal year 2013.

Fish and Wildlife Administration

All remaining fiscal year 2011 federal budget amendment authority for the crucial areas and connectivity assessment and training and the Idaho-Montana divide transboundary decision support system is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the data integration and collaborative services for crucial areas assessments and the Montana pass-through component of the state wildlife grant for tracking and reporting actions for conservation of species is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the comprehensive conservation plan for Montana is authorized to continue into federal fiscal year 2013.

Department of Environmental Quality

Central Management Program

All remaining fiscal year 2011 federal budget amendment authority for the federal fiscal year 2010 exchange network is authorized to continue into federal fiscal year 2012.

Planning, Prevention, and Assistance Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the state energy programs is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Lake Como fly ash boat ramp and state energy efficient appliance rebate program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the state of Montana energy efficiency and conservation block grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the state of Montana energy efficiency and conservation block grant, energy assurance planning, and the national wetlands condition assessment is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Montana clean water grant and the Montana drinking water grant is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the 106 supplemental monitoring initiative is authorized to continue into federal fiscal year 2013.

Remediation Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for leaking underground storage tanks is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for abandoned mine lands reclamation throughout Montana is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the superfund state site, the great divide sand tailings abandoned mine lands reclamation project, and the great divide sand tailings removal is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the abandoned mine lands reclamation grant and the abandoned mine lands consolidated grant is authorized to continue into federal fiscal year 2013.

Permitting and Compliance Division

All remaining fiscal year 2011 federal budget amendment authority for the Zortman/Landusky mine wind turbine and infrastructure installation is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Montana drinking water grant is authorized to continue into federal fiscal year 2013.

Department of Transportation

General Operations Program

All remaining fiscal year 2011 federal budget amendment authority for the federal highway administration on-the-job training supportive services program for the Salish Kootenai college and the federal highway administration on-the-job training supportive services program for the Fort Peck community college is authorized to continue into federal fiscal year 2013.

Construction Program

All remaining fiscal year 2011 federal budget amendment authority for the federal fiscal year 2009 federal-aid highway program obligation is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for highway funding is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the Montana height modernization program and the federal fiscal year 2010 federal-aid highway program obligation is authorized to continue into federal fiscal year 2013.

Rail, Transit, and Planning Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the transit funding formula is authorized to continue into federal fiscal year 2012.

Department of Livestock

Centralized Services Program

All remaining fiscal year 2011 federal budget amendment authority to compensate livestock owners for losses of livestock due to wolf predation is authorized to continue into federal fiscal year 2013.

Department of Natural Resources and Conservation

Conservation and Resource Development Division

All remaining fiscal year 2011 federal budget amendment authority for the safe drinking water state revolving fund and the clean water state revolving fund is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Montana clean water state revolving fund and the Montana drinking water state revolving fund is authorized to continue into federal fiscal year 2013.

Water Resources Division

All remaining fiscal year 2011 federal budget amendment authority for the digital flood insurance rate map for Yellowstone County and the digital flood insurance rate map for Missoula County is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the digital flood insurance rate map for Sanders County and the digital flood insurance rate map for Lake County is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Flint Creek ditch diversion replacement and fish screen project, the digital flood insurance rate map for Broadwater County, the digital flood insurance rate map for Sweet Grass County, and the digital flood insurance rate map for Stillwater County is authorized to continue into federal fiscal year 2013.

Forestry and Trust Lands Division

Providing technical assistance in forest-based conservation and enhancement to landowners, residents, and organizations within the state of Montana

FY 2011 \$75,000 Federal

All remaining fiscal year 2011 federal budget amendment authority for providing technical assistance in forest-based conservation and enhancement to landowners, residents, and organizations within the state of Montana, the Montana cooperative fire protection agreement, the prescribed burning program on the Helena national forest, the additional staffing at Kootenai interagency dispatch center for prescribed fire purposes, and participation in prescribed burning activities with the bureau of land management is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for USFS state and private forestry assistance is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the hazardous fuels grant, the forest restoration grant, the forest stewardship program, urban and community forestry and forest health management, state fire assistance and volunteer fire assistance and conservation education, hazardous fuel reduction work on adjacent nonfederal lands, hazardous fuel reduction and restoration forestry projects, and forest health restoration activities is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the aerial fire depot, to provide additional staffing for fire control purposes, and to enhance biomass utilization is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the forest health management western bark beetle/white pine blister rust program, the conservation reserve program, the consolidated payments grant, hazardous fuel reductions, the forested trust lands habitat conservation plan, and the citizen awareness and monitoring program of invasive insects and diseases is authorized to continue into federal fiscal year 2013.

Department of Administration

Information Technology Services Division

All remaining fiscal year 2011 federal budget amendment authority for the community oriented policing services technology grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for ensuring needed help arrives near callers employing 911 is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for integration and enhancement of a statewide digital cadastral database is authorized to continue into federal fiscal year 2013.

Department of Agriculture

Agricultural Development Division

Federal fiscal year 2011 specialty
crop block grant program farm
bill activities

FY 2011 \$292,954.47 Federal

All remaining fiscal year 2011 federal budget amendment authority for the Montana locally grown portion of the specialty crop block grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for developing Montana's direct farm market and supply chains is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the federal fiscal year 2011 specialty crop block grant program farm bill activities and the federal fiscal year 2010 specialty crop block grant program farm bill activities is authorized to continue into state fiscal year 2013.

Department of Corrections

Adult Community Corrections

All remaining fiscal year 2011 federal budget amendment authority for interventions for high-risk offenders in rural Montana is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority to provide statewide training on sex offender assessment, treatment, reentry, supervision, and monitoring as identified by the center for sex offender management's assessment of Montana is authorized to continue into federal fiscal year 2012.

Secure Custody Facilities

State criminal alien assistance program FY 2011 \$26,092 Federal

Department of Commerce

Business Resources Division

Small Business Jobs Act program FY 2011 \$325,000 Federal

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the community development block grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Small Business Jobs Act program is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the state broadband data and development grant is authorized to continue into federal fiscal year 2013.

Energy Promotion and Development Division

All remaining fiscal year 2011 federal budget amendment authority for empowering Montana to accelerate wind energy development is authorized to continue into state fiscal year 2012.

Community Development Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the community development block grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the neighborhood stabilization program is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the neighborhood stabilization program part III is authorized to continue into federal fiscal year 2013.

Housing Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the tax credit assistance program and the housing credit exchange is authorized to continue into state fiscal year 2012.

Department of Labor and Industry

Workforce Services Division

All remaining fiscal year 2011 federal budget amendment authority for the western Montana timber and wood dislocated workers grant, the national emergency grant for dislocated workers program, and the energy training partnership grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for trade adjustment assistance is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the reemployment and eligibility assessment initiative grant is authorized to continue into state fiscal year 2013.

Unemployment Insurance Division

FY 2011 emergency unemployment compensation	FY 2011	\$429,353	Federal
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FY 2010 emergency unemployment compensation	FY 2011	\$419,397	Federal
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All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the extend emergency unemployment compensation program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the additional emergency unemployment compensation administration grant and the additional unemployment insurance state administration grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the reemployment and eligibility assessment initiative grant, the FY 2010

emergency unemployment compensation grant, and the unemployment insurance state administration grant is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the FY 2011 emergency unemployment compensation grant is authorized to continue into federal fiscal year 2013.

Office of Community Services

AmeriCorps planning grant program FY 2011 \$27,445 Federal

All remaining fiscal year 2011 federal budget amendment authority for the AmeriCorps planning grant program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for carrying out a national service program is authorized to continue into state fiscal year 2013.

Department of Military Affairs

Disaster and Emergency Services

Emergency operations center FY 2011 \$1,700,000 Federal

All remaining fiscal year 2011 federal budget amendment authority for the federal emergency management agency program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the hazard mitigation grant program and the emergency operation center is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the predisaster mitigation competitive grants is authorized to continue into federal fiscal year 2013.

Department of Public Health and Human Services

Management and Disability Services

Sustaining the work of the medicaid infrastructure grant FY 2011 \$750,000 Federal

All remaining fiscal year 2011 federal budget amendment authority for sustaining the work of the medicaid infrastructure grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the vocational rehabilitation grants to states is authorized to continue into state fiscal year 2012.

Human and Community Services Division

Low-income home energy assistance program FY 2011 \$16,311,720 Federal

Supplemental nutrition assistance program FY 2011 \$8,843,143 Federal

Support for pregnant and parenting teens FY 2011 \$1,000,000 Federal

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for weatherization — FY 2009 and weatherization — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for support for pregnant and parenting teens is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the low-income home energy assistance program, the weatherization assistance program, the child care and development fund, and the weatherization training center is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for SNAP — Food Stamps FY 2009 and SNAP — Food Stamps FY 2010-11 is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for homeless prevention/emergency food and shelter — FY 2009 and homeless prevention/emergency food and shelter — FY 2010-11 is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the supplemental nutrition assistance program, the early learning state advisory council, the child care wellness program grant, and the food stamp performance bonus is authorized to continue into federal fiscal year 2013.

Public Health and Safety Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for WIC — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the prevention and wellness fund — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the prevention and wellness fund — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the public health emergency response (H1N1) grant, the public health emergency response (H1N1) phase IV grant, the affordable care act, the maternal, infant, and early childhood home visiting program, the personal responsibility education program and enhancing interoperability of electronic health records is authorized to continue into federal fiscal year 2012.

Disability Services Division

All remaining fiscal year 2011 federal budget amendment authority for the Montana community-based alternatives to psychiatric residential treatment facilities demonstration grant is authorized to continue into state fiscal year 2012.

Senior and Long-Term Care Division

Preventative health grant for state and community programs on aging	FY 2011	\$26,220	Federal
Federal congregate and home-delivered meals grant for state and community programs on aging	FY 2011	\$812,888	Federal
Ombudsman allotments for vulnerable elder rights protection activities	FY 2011	\$20,774	Federal
Nutrition services incentive program	FY 2011	\$194,293	Federal

All remaining fiscal year 2011 federal budget amendment authority for the preventative health grant for state and community programs on aging, the federal congregate and home-delivered meals grant for state and community programs on aging, the ombudsman allotments for vulnerable elder rights protection activities, the nutrition services incentive program, the Medicare Improvements for Patients and Providers Act for priority area 2, for the Medicare Improvements for Patients and Providers Act for priority area 3, and from the national council on aging is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Medicare Improvements for Patients and Providers Act is authorized to continue into federal fiscal year 2012.

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

Approved May 12, 2011

CHAPTER NO. 365

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations from natural resources projects state special revenue account. (1) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to:

(a) \$100,000 to be used for emergency projects to be awarded over the course of the biennium;

(b) \$800,000 to be used for planning grants to be awarded by the department over the course of the biennium;

(c) \$300,000 to be used for irrigation development grants to be awarded by the department over the course of the biennium;

(d) \$50,000 to be used for water project private grants to be awarded by the department over the course of the biennium; and

(e) \$180,000 to be used for development of the state water plan and inventory to be awarded by the department over the course of the biennium.

(2) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation \$6,260,000 that is available in the natural resources projects state special revenue account for grants to political subdivisions and local governments during the 2013 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 3] and the contingencies described in the renewable resource grant and loan program January 2011 report to the 62nd legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3). Funds must be awarded up to the amounts approved in this section in the

following order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list or planning grants that would not otherwise receive funding. If at any time a grant sponsor determines a project will not begin before June 30, 2013, the sponsor shall notify the department of natural resources and conservation. After receiving notification, the department may revert the grant amount to the natural resources projects state special revenue account to make it immediately available for other projects. After all eligible projects are funded, remaining project funds may be used for any renewable resource program projects authorized under this section or for reclamation and development program projects authorized by the 62nd legislature in House Bill No. 7. With the exception of planning grants, projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 3].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Department of Natural Resources and Conservation — Water Resources Division (Hydropower Feasibility Study)	\$100,000
Sheridan, Town of (Wastewater System Improvements)	\$100,000
Deer Lodge, City of (Wastewater System Improvements)	\$100,000
Fergus Conservation District (Big Spring Creek Stream Restoration at the Machler Conservation Easement)	\$100,000
Department of Natural Resources and Conservation — Trust Land Management Division (Smith Lake Dam Rehabilitation)	\$100,000
Culbertson, Town of (Wastewater System Improvements)	\$100,000
Upper and Lower River Road Water and Sewer District (Water Distribution and Wastewater Collection, Phase 4)	\$100,000
Beaverhead Conservation District (Poindexter Slough Fishery Enhancement)	\$100,000
Pondera Conservation District (C Canal Rehabilitation)	\$100,000
Buffalo Rapids Project - District 1 (System Improvements - Lateral 26.4)	\$100,000
Pondera Conservation District (Wasteway Rehabilitation and Water Quality Improvement)	\$100,000
Flathead County (Bigfork Storm Water System Improvements)	\$100,000
Hebgen Lake Estates Water and Sewer District (Wastewater System Improvements)	\$100,000
Harlem, City of (Wastewater System Improvements)	\$100,000

1537	MONTANA SESSION LAWS 2011	Ch. 365
Polson, City of (Water System Improvements)		\$100,000
Amsterdam-Churchill Sewer District No. 307 (Wastewater System Improvements)		\$100,000
Stanford, Town of (Water System Improvements)		\$100,000
Helena Valley Irrigation District (Pump No. 2 Rehabilitation)		\$100,000
Belt, Town of (Water System Improvements)		\$100,000
Sun Prairie Village County Water and Sewer District (Water System Improvements)		\$100,000
Fort Belknap Indian Community (Fort Belknap Indian Community Water Conservation)		\$100,000
Sweet Grass County Conservation District (Big Timber Creek Channel Stabilization)		\$99,998
Sidney Water Users Irrigation Districts 1 and 2 (Increasing Irrigation Efficiency: Districts 1 and 2, Phase 3)		\$100,000
Sidney Water Users Irrigation District (Increasing Irrigation Efficiency: District 5, Lateral 2)		\$100,000
Clinton Irrigation District (Schoolhouse Lateral Pipeline Conversion)		\$100,000
East Bench Irrigation District (Main Canal Check Structure Rehabilitation)		\$100,000
Lower Musselshell Conservation District (Lower Musselshell Delphia Melstone Irrigation Structure Rehabilitation Lining)		\$100,000
Madison Conservation District (South Meadow Creek Water Efficiency)		\$100,000
Confederated Salish and Kootenai Tribes (Jocko Upper S Canal Lining)		\$100,000
Malta Irrigation District (Dodson North Canal Siphons Replacement)		\$100,000
Roberts Carbon County Water and Sewer District (Roberts Wastewater System Improvements)		\$100,000
Chippewa Cree Tribe of the Rocky Boy's Reservation (Dry Fork Farms Irrigation Enhancement)		\$97,429
Flathead Joint Board of Control (Jocko Upper J Canal Diversion Structure)		\$100,000
Lockwood Irrigation District (Intake Canal Spillway Replacement)		\$100,000
Glendive, City of (Glendive Floodplain Feasibility Study)		\$100,000
Fort Shaw Irrigation District (Water Quality and Quantity Improvements)		\$100,000
Daly Ditches Irrigation District (Hedge Canal Improvement)		\$100,000
Gallatin Gateway County Water and Sewer District (Wastewater System Improvements)		\$100,000

Ch. 365	MONTANA SESSION LAWS 2011	1538
Greenfields Irrigation District (Big Coulee Wastewater and Water Quality)		\$100,000
Park Conservation District (Park-Branch Paradise Canal Water Efficiency)		\$100,000
Huntley Project Irrigation District (Lower Canal Seepage Lining)		\$100,000
Anaconda-Deer Lodge County (Systemwide Water Meter Installation)		\$100,000
Fairfield, Town of (Water System Improvements)		\$100,000
Fort Peck Tribes (Lateral L-2M Rehabilitation)		\$100,000
Hardin, City of (Water System Improvements)		\$100,000
Bitter Root Irrigation District (Siphon 1 Improvement, Phase 2)		\$100,000
North Havre County Water District (Water System Improvements)		\$100,000
Roundup, City of (Musselshell Watershed Sustainable Irrigation Management Program)		\$60,000
Department of Natural Resources and Conservation — Water Resources Division (Clark Fork River Basin Task Force)		\$63,000
Green Mountain Conservation District (Tuscor Creek Restoration)		\$84,778
Lewistown, City of (East Fork Dam Repair)		\$100,000
Crow Tribe (Crow Agency Water System Improvements, Phase 4A)		\$100,000
Hill County Water District (Water System Improvements)		\$100,000
Roundup, City of (Water System Improvements)		\$100,000
Kevin, Town of (Water System Improvements, Phase 3)		\$100,000
LaCasa Grande Water and Sewer District (Wastewater System Improvements)		\$100,000
Whitefish, City of (Haskill Basin Water Conservation and Preservation)		\$100,000
Ravalli County (LiDAR Mapping for Flood Hazard Identification, Phase 3)		\$75,000
Lockwood Water and Sewer District (Wastewater System Improvements)		\$100,000
Montana Department of Fish, Wildlife, and Parks (Chadbourne Diversion Dam Repair and Selective Fish Passage Retrofits)		\$99,500

1539	MONTANA SESSION LAWS 2011	Ch. 365
	Department of Natural Resources and Conservation — Water Resource Division (East Fork Rock Creek Diversion and Fish Screen)	\$100,000
	Teton Conservation District (Eureka Reservoir Improvements)	\$100,000
	East Helena, City of (Wastewater System Improvements)	\$100,000
	Missoula County (Spring Meadows Sewer)	\$100,000
	Missoula County (Missoula County LiDAR Mapping)	\$50,000
	Department of Natural Resources and Conservation — Water Resources Division (Martinsdale Supply Canal Headworks Rehabilitation)	\$98,688
	Ravalli County Environmental Health (Bitterroot Valley Septic Systems Impact Evaluation Model, Phase 2)	\$73,745
	Foy's Lakeside County Water and Sewer District (Water System Improvements)	\$100,000
	Pablo/Lake County Water and Sewer District (Water System Improvements)	\$100,000
	Cut Bank, City of (Water System Improvements, Phase 4)	\$100,000
	University of Montana Natural Heritage Program (Wetland and Riparian Mapping for the Lower and Middle Musselshell Watersheds)	\$99,934
	Bozeman High School, Montana School District No. 7 (Mandeville Creek Restoration and Community Education)	\$100,000
	White Sulphur Springs, City of (Water System Improvements)	\$100,000
	Department of Natural Resources and Conservation — Water Resources Division (Cooney and Deadman's Basin Automated Instrumentation)	\$100,000
	Park Conservation District (Livingston Ditch Water Efficiency and Infrastructure Protection)	\$100,000
	Carbon Conservation District (Whitehorse Canal Company — River Bank Stabilization)	\$82,950
	Ronan, City of (Storm water System Improvements)	\$100,000
	Fromberg, Town of (Water System Improvements)	\$100,000
	Jordan, Town of (Water System Improvements)	\$100,000
	Lower Yellowstone Irrigation Project Board of Control (Lower Yellowstone On-Farm Water Conservation Measures)	\$100,000
	Butte-Silver Bow Consolidated City-County Government (Big Hole River Pump station Rehabilitation)	\$100,000

Ch. 365	MONTANA SESSION LAWS 2011	1540
Manhattan, Town of (Water System Improvements)		\$100,000
North Powell Conservation District (Blackfoot Irrigation Efficiency)		\$60,000
Kalispell, City of (Woodland Park Pond Remediation)		\$100,000
Department of Natural Resources and Conservation — Water Resources Division (StreamStats Interactive Web Map Application)		\$100,000
Libby, City of (Wastewater Collection System and Treatment Facility Upgrades)		\$100,000
Toston Irrigation District (Crow Creek Pumping Plant Rehabilitation)		\$100,000
Em-Kayan Water and Sewer District (Water System Improvements)		\$100,000
Gallatin County Solid Waste District (Logan Landfill Waste-to-Energy Feasibility Study)		\$100,000
Hill County Conservation District (Milk River Basin Riparian and Hydrology Restoration)		\$54,245
Brady County Water and Sewer District (Water System Improvements)		\$100,000
Lincoln Conservation District (Sinclair Creek Watershed Improvement)		\$100,000
Tin Cup Water and Sewer District (Tin Cup Lake Dam Improvements)		\$94,638
Melrose Water and Sewer District (Wastewater System Improvements)		\$100,000
Augusta Water and Sewer District (Wastewater System Improvements)		\$100,000
Target Range Water and Sewer District (Replacing Obsolete Septic Systems)		\$100,000
Carbon Conservation District (Pleasant Valley Canal Rehabilitation)		\$100,000
Troy, City of (Water System Improvements, Phase 3)		\$100,000
Department of Natural Resources and Conservation — Water Resources Division (Water Resource Survey Framework)		\$71,000
University of Montana (Developing Wolf Population Monitoring Techniques to Advance Management and Conservation of Wildlife in Montana)		\$100,000
Lockwood Area/Yellowstone County Water and Sewer District (Water Treatment Plant Clearwell Addition)		\$100,000
Eureka, Town of (Wastewater System Upgrade and Expansion)		\$100,000
Joliet, Town of (Water System Improvements)		\$100,000

University of Montana (An Experimental Assessment of the Ecological and Social Dimensions of Human-Bear Conflict)	\$99,067
Bigfork County Water and Sewer District (Water Supply and Transmission Main Improvements)	\$100,000
Park County (Shields River Surface and Groundwater Analysis, Planning and Long-Range Policy Formulation)	\$81,192
Petroleum County Conservation District (Horse Creek Coulee Water Storage)	\$82,286
Shelby, City of (West Interceptor Water System)	\$100,000
Sidney, City of (Optimizing Water Development from the City of Sidney Well Field)	\$100,000
Thompson Falls, City of (Transmission Main Replacement)	\$100,000

(4) Grant projects listed in subsection (3) are eligible for a loan up to the amounts recommended in subsection (3) in lieu of a grant. The authorization for the loan is contained in House Bill No. 8.

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2013 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 3] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 62nd legislature may result in the proportional reduction in grant amount.

(2) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 62nd legislature for the 2013 biennium or, in the case of emergency, irrigation development, and private grant and planning grant applications, of conditions specified at the time of written notification of approved grant authority;

(3) execution of a grant agreement with the department; and

(4) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Appropriations established. For any entity of state government that receives a grant under [sections 1 and 2], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to entities from prior biennia are reauthorized for completion of contract work.

Section 4. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will

review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 366

[HB 8]

AN ACT REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 61ST LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS ON LOANS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 61st legislature in Chapter 372, Laws of 2009, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2011. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) and (3) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 15 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - WATER RESOURCES DIVISION	
Ruby Dam Rehabilitation Project	\$2,000,000

(3) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - CONSERVATION AND RESOURCE DEVELOPMENT DIVISION	
Refinance Existing Debt or Rehabilitation of Water and Sewer Facilities	\$2,859,000

(4) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
SUNSET IRRIGATION DISTRICT	
Gravity Flow Irrigation Pipelines	\$1,465,266

Section 2. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 6]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$13,724,457, of which \$6,324,266 is to be used to finance the projects approved in [section 1], \$5,610,044 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, and up to \$1,790,147 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [section 1] and this section and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the natural resources projects state special revenue account established in 15-38-302.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 3. Conditions of loans. (1) Disbursement of funds under [sections 1 and 2] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 4. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 5. Appropriations established. For any entity that receives a loan under [sections 1 and 2], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 6. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 2] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 2].

(2) The legislature, through the enactment of [sections 1 through 6] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 2] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 6] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 367

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2]

and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society \$30,000 for the biennium ending July 1, 2013, for care and conservation of capitol complex artwork.

Section 2. Appropriation of cultural and aesthetic grant funds. The following projects are approved, and \$666,299 is appropriated to the Montana arts council for the biennium ending June 30, 2013, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Grant Amount
A. Special Project \$4,500 or less		
1607	Signatures From Big Sky	\$ 4,500
1604	Miles City Speakers Bureau	\$ 4,000
1609	Upper Swan Valley Historical Society	\$ 4,400
1603	Mai Wah Society	\$ 3,000
1606	Montana Storytelling Roundup	\$ 3,000
1608	String Orchestra of the Rockies	\$ 3,000
1610	Yellowstone Ballet Company	\$ 3,000
1600	Clay Arts Guild	\$ 2,500
1605	Mission Valley Friends of the Arts	\$ 2,000
B. Special Projects		
1621	Humanities Montana	\$14,220
1632	CoMotion Dance Project	\$9,480
1617	Emerson Center for the Arts & Culture	\$6,636
1630	Musikanten Montana	\$7,593
1622	KUFM-TV	\$7,110
1634	Whitefish Theatre Company	\$8,532
1611	Bitter Root Cultural Heritage Trust	\$4,740
1626	Montana Historical Society	\$7,110
1614	Broadwater Productions, Inc.	\$9,480
1620	Hockaday Museum of Art	\$8,532
1631	Queen City Ballet	\$4,740
1624	Missouri Valley Development Corporation	\$4,740
1635	Zootown Arts Community Center	\$4,740
1623	Missoula Art Museum	\$7,110
1613	Bozeman Symphony Society	\$7,584
1633	Tobacco Valley Improvement Association Board of Arts	\$ 2,500
1619	Hamilton Players, Inc.	\$ 4,400
1612	Bitter Root Valley Historical Society/ Ravalli County Museum	\$ 3,000
1615	Butte-Silver Bow Public Archives	\$4,740
1629	Museum of the Rockies	\$4,740

Ch. 367	MONTANA SESSION LAWS 2011	1546
1627	Montana Museum of Art & Culture	\$4,740
1618	Fraternal Order of Eagles	\$ 4,000
C. Operational Support		
1668	Museums Association of Montana	\$10,000
1665	Montana Preservation Alliance	\$15,000
1662	Montana Arts	\$12,500
1657	Museum & Art Gallery Directors' Association	\$12,000
1628	Montana Performing Arts Consortium	\$12,500
1663	Montana Association of Symphony Orchestras	\$12,500
1664	Montana Dance Arts Association	\$12,000
1689	YMCA Writer's Voice	\$14,220
1685	VSA Montana	\$9,586
1649	District 7 Human Resources Development Council	\$14,220
1666	Montana Shakespeare in the Parks	\$14,220
1638	Archie Bray Foundation	\$11,850
1647	Carbon County Historical Society	\$15,168
1654	Helena Symphony Society, Inc.	\$14,220
1648	Custer County Art & Heritage Center	\$12,324
1679	Stillwater Historical Society	\$11,376
1640	Beaverhead County Museum	\$15,168
1651	Glacier Symphony and Chorale	\$12,324
1673	Pondera History Association	\$11,376
1677	Schoolhouse History & Art Center	\$14,220
1655	Holter Museum of Art	\$11,850
1686	Western Heritage Center	\$11,376
1652	Great Falls Symphony	\$11,376
1644	Butte Citizens for Preservation and Revitalization	\$11,376
1642	Billings Symphony Society	\$11,376
1641	Big Horn Arts and Craft Association	\$11,376
1636	Alberta Bair Theater	\$9,480
1639	Art Mobile of Montana	\$11,376
1680	Sunburst Foundation	\$ 7,584
1661	Montana Artists Refuge	\$ 4,740
1643	Butte Center for the Performing Arts	\$ 7,584
1671	Paris Gibson Square Museum of Art	\$ 9,480
1656	Intermountain Opera Association	\$ 7,584
1658	MCT, Inc.	\$ 7,110
1674	Rimrock Opera	\$ 7,110
1683	Montana Repertory Theatre	\$ 4,740
1645	Butte Symphony Association	\$ 7,110
1676	Rocky Mountain Ballet Theatre	\$ 7,584
1669	North Valley Music School	\$ 7,584
1650	Gallatin Historical Society	\$ 5,688
1678	Southwest Montana Arts Council	\$ 7,584

1547	MONTANA SESSION LAWS 2011	Ch. 368
1687	World Museum of Mining	\$ 4,740
1688	Yellowstone Art Museum	\$ 7,584
1653	Helena Presents/Myrna Loy Center	\$ 7,584
1637	Alpine Artisans	\$ 4,000
1670	Northwest Montana Historical Society	\$ 4,740
1660	Missoula Cultural Council	\$ 3,680
1682	Equinox Theatre Company	\$ 2,000
1667	Friends of the Museum of the Plains Indian Artist	\$ 2,000
1672	Pondera Arts Council	\$ 2,000
D. Capital Expenditure		
1691	Fort Peck Fine Arts Council, Inc.	\$15,524
1692	Laurel Revitalization League Inc.	\$ 4,740

Section 3. Contingent appropriation of additional grant money. If either or both of the appropriations in House Bill No. 2 to the Montana arts council for Promotion of the Arts of \$204,342 state special revenue for fiscal year 2012 and \$201,903 state special revenue for fiscal year 2013 are reduced, then the appropriation in [section 2] is increased by the amount of the reduction, not to exceed a total increase of \$28,677. This appropriation increase must increase the grant amount for projects with grant approvals greater than \$4,500 on a pro rata basis, with the exception of service organization grants. Service organization grants for Museums Association of Montana, Montana Preservation Alliance, Montana Arts, Museum & Art Gallery Directors' Association, Montana Performing Arts Consortium, Montana Association of Symphony Orchestras, and Montana Dance Arts Association are not increased by the additional appropriation.

Section 4. Reversion of grant money. On July 1, 2013, the unencumbered balance of the 2013 biennium grants reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 5. Reduction of grants on pro rata basis. Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to projects with funding greater than \$4,500 will be made on a pro rata basis.

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 368

[HB 10]

AN ACT REDUCING CERTAIN 2009 INFORMATION TECHNOLOGY APPROPRIATIONS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF REVENUE, AND THE SUPREME COURT AND REVISING APPROPRIATION CONDITIONS; REVISING BIDDER CRITERIA FOR THE UNEMPLOYMENT INSURANCE TAX MODERNIZATION PROJECT; AMENDING SECTION 14, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 16, CHAPTER 3, SPECIAL LAWS OF MAY 2007, AND SECTION 2, CHAPTER 435, LAWS OF 2009; TRANSFERRING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 14, Chapter 3, Special Laws of May 2007, is amended to read:

“Section 14. Information technology appropriations and authorizations. (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration for the indicated information technology capital projects:

Agency/Project	LRITP	Federal Special Revenue	Total
DEPARTMENT OF ADMINISTRATION			
Network Upgrades	2,042,000		2,042,000
University Research Network	568,000		568,000
Public Safety Radio Consortium	4,595,000		4,595,000
Public Safety Radio Interoperability	3,500,000		3,500,000
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
TANF Eligibility System	7,625,000	8,600,000	16,225,000
CHIMES System (Completion)	550,000	550,000	1,100,000
Food Stamps System	6,535,000	6,535,000	13,070,000
Child and Adult Protective Services (CAPS) System	15,204,000 4,930,240	11,946,000 3,873,760	27,150,000 8,804,000
ICD 10 (Medicaid Disease Codes)	300,000	2,700,000	3,000,000

(4) There is appropriated to the department of administration \$5.618 million from the state general fund in the 2009 biennium for the operating costs associated with the network upgrades, the university research network, and the public safety radio consortium projects listed in subsection (3). If this appropriation is not fully expended for operating costs, then the remaining amount of the appropriation may be used to complete the network upgrades expansion and public safety radio consortium projects in subsection (3).”

Section 2. Section 16, Chapter 3, Special Laws of May 2007, is amended to read:

“Section 16. Judicial branch information technology capital projects appropriation. (1) There is appropriated to the supreme court ~~\$2,909,470~~ ~~\$2,569,470~~ from the LRITP for case management improvements and courtroom technology improvements in the judicial branch.

(2) Before encumbering any funds appropriated in subsection (1), the office of court administrator shall submit a project and security plan, as described in

[section 14(1)], to the chief information officer. The chief information officer shall promptly review the plan and, if necessary, make timely recommendations to the office of court administrator regarding implementation of the plan.

(3) As part of the annual report to the law and justice interim committee and house appropriations subcommittee required under 3-1-702, the office of court administrator shall include an update on the implementation of projects funded under this section.

(4) There is appropriated to the judicial branch \$1,025,530 from the state general fund in the 2009 biennium for operating costs associated with the judicial branch information technology project in subsection (1). If this appropriation is not fully expended for operating costs, then the remaining amount of the appropriation may be used to complete the judicial branch project in subsection (1)."

Section 3. Section 2, Chapter 435, Laws of 2009, is amended to read:

"Section 2. Appropriations and authorizations. (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

Agency/Project	LRITP	State Special Revenue	Federal Special Revenue	Total
DEPARTMENT OF REVENUE				
Efficiency through Imaging	3,366,178			3,366,178
	3,242,905			3,242,905
DEPARTMENT OF LABOR AND INDUSTRY				
Building Standards		2,400,000		2,400,000
Licensing Standards		2,250,000		2,250,000
Unemployment Insurance				
Tax Modernization		16,735,567	3,000,000	19,735,567
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES				
Medicaid Management Information				
System Replacement	3,500,000		62,000,000	65,500,000
SECRETARY OF STATE				
Information Management				
System	1,500,000			1,500,000

(4) The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the long-range

information technology fund type and among department of public health and human services projects. The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the federal special revenue fund type and among department of public health and human services projects. The department of public health and human services shall report changes to appropriations and authority related to the information technology projects in section 14, Chapter 3, Special Laws of May 2007, and in [section 3] and this section to the interim legislative finance committee upon occurrence.

(5) The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance tax modernization project. To reduce state risk, a scoring preference for bidders of not less than ~~10%~~ 20% of the total scoring for the request for proposals for the unemployment insurance tax modernization project must be established and may be given only to vendors who have ~~installed in at least one other state a substantially similar project, that meets substantially similar projects installed and in production in at least two other states within the past 5 years and that meet~~ all federal department of labor reporting requirements. In responding to the request for proposals, each vendor shall identify in what states the vendor's substantially similar ~~project~~ *has projects* have been installed, how long ~~it has~~ *the projects* have been in production, and whether the ~~project meets~~ *projects meet* all federal department of labor reporting requirements.

(6) For the item Medicaid Management Information System Replacement in subsection (3), the department of public health and human services shall provide a work plan with milestones, goals, and measures to guide the medicaid management information system replacement to the Legislative Finance Committee at its June 2009 meeting. At each legislative finance committee meeting, the department shall provide an update on its activities and progress toward achieving elements of the work plan in a format developed in conjunction with the legislative finance committee. To reduce state risk, a vendor who successfully bids on the medicaid management information system replacement project must have experience, proven performance, corporate resources, and corporate qualifications in large-scale data processing system development along with health care claims processing experience in system planning, design, development, implementation, and operation. In responding to the request for proposals, each vendor shall identify whether the vendor's proposed solution is substantially similar to a project that has been installed in another state, how long the project has been in production, and whether the project has been approved by the centers for medicare and medicaid services."

Section 4. Fund transfer. By June 30, 2011, \$4,762,033 must be transferred from the long-range information technology program account in the capital projects fund type to the state general fund.

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

Approved May 12, 2011

CHAPTER NO. 369

[HB 122]

AN ACT REVISING BENEFIT AND FUNDING PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; INCREASING THE NORMAL RETIREMENT AGE FOR NEW HIRES; INCREASING THE AGE OF ELIGIBILITY FOR EARLY RETIREMENT FOR NEW HIRES; ELIMINATING EARLY RETIREMENT ELIGIBILITY BASED ON MEMBERSHIP SERVICE FOR NEW HIRES; CHANGING THE CALCULATION OF HIGHEST AVERAGE COMPENSATION FOR NEW HIRES; REDUCING THE MULTIPLIER USED TO CALCULATE BENEFIT PAYMENTS FOR NEW HIRES; INCREASING THE EMPLOYEE CONTRIBUTIONS DUE ON BEHALF OF NEW HIRES; AMENDING SECTIONS 19-3-108, 19-3-315, 19-3-513, 19-3-901, 19-3-902, 19-3-904, 19-3-906, 19-3-1002, 19-3-1008, 19-3-1106, 19-3-1205, 19-3-2117, 19-3-2141, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) *"Banked holiday time"* means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(1)(2) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, *banked holiday time*, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, *banked holiday time*, or annual leave paid without termination of employment.

(2)(3) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3)(4) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4)(5) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

~~(5)~~(6) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

~~(6)~~(7) (a) "Highest average compensation" means ~~a member's~~:

~~(i) for a member hired prior to [the effective date of this act], the highest average monthly compensation during any 36 consecutive months of membership service, except as otherwise provided in subsection (6)(b) or (6)(c).;~~

~~(b) For a member who has attained 65 years of age but has not served at least 36 months, highest average compensation means total compensation earned divided by the number of months the member has served.~~

~~(c) For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.~~

~~(ii) for a member hired on or after [the effective date of this act], the highest average monthly compensation during any 60 consecutive months of membership service; or~~

~~(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.~~

~~(d)~~(b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, *banked holiday time*, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

~~(7)~~(8) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 2. Section 19-3-315, MCA, is amended to read:

"19-3-315. Member's contribution to be deducted. (1) (a) Each member's contribution is:

~~(i) for a member hired prior to [the effective date of this act], 6.9% of the member's compensation; and~~

~~(ii) for a member hired on or after [the effective date of this act], 7.9% of the member's compensation.~~

~~(b) For members hired on or after [the effective date of this act], the board shall periodically review the required contributions and recommend future adjustments to the legislature as needed to maintain the amortization schedule set by the board for the payment of the system's unfunded liability.~~

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's

contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 3. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement *or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904.*

(4) ~~Once a member has at least 25 years of membership service, purchases~~ *Purchases* of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906, *if applicable.*"

Section 4. Section 19-3-901, MCA, is amended to read:

"19-3-901. Eligibility for service retirement. (1) A member *hired prior to [the effective date of this act]* who has:

(a) ~~attained the age of 60 and has 5 years of membership service is eligible for service retirement. A member who has;~~

(b) ~~attained age 65 before or while employed in a position covered by a the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has; or~~

(c) 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) *A member hired on or after [the effective date of this act] who has:*

(a) *attained age 65 and has 5 years of membership service is eligible for service retirement; or*

(b) *attained age 70 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service.*

~~(2)(3)~~ *In each of the circumstances described in subsection subsections (1) and (2), the member has attained normal retirement age."*

Section 5. Section 19-3-902, MCA, is amended to read:

"19-3-902. Eligibility for early retirement. (1) A member *hired prior to [the effective date of this act]* who:

(a) is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement. ~~A member who; or~~

(b) has completed 25 years or more of membership service is eligible for early retirement.

(2) A member hired on or after [the effective date of this act] who is not eligible for service retirement but has attained age 55 and has 5 years of membership service is eligible for early retirement.”

Section 6. Section 19-3-904, MCA, is amended to read:

“19-3-904. Amount of service retirement benefit. (1) ~~Except as provided in subsection (2), the~~ *The* monthly amount of service retirement benefit payable *following retirement* to a member ~~following retirement~~ *hired before [the effective date of this act] with:*

(a) *less than 25 years of membership service is the greater of subsection (1)(a) or (1)(b) as follows:*

(a) ~~one fifty-sixth of the member’s highest average compensation multiplied by the number of years of the member’s total service credit~~ *or the benefit calculated under subsection (3); or*

(b) ~~a monthly benefit that is the sum of:~~

(i) ~~the actuarial equivalent of double the member’s regular contributions and regular interest; plus~~

(ii) ~~the actuarial equivalent of any additional contributions and regular interest.~~

~~(2) For a member with at least 25 years of membership service, the monthly amount of service retirement benefit must be equal to~~

(b) *25 or more years of membership service is the greater of one-fiftieth 2% of the member’s highest average compensation multiplied by the number of years of the member’s total service credit instead of the amount calculated under subsection (1)(a) or the benefit calculated under subsection (3).*

(2) The monthly amount of service retirement benefit payable following retirement to a member hired on or after [the effective date of this act] with:

(a) *less than 10 years of membership service is the greater of 1.5% of the member’s highest average compensation multiplied by the number of years of the member’s total service credit or the benefit calculated under subsection (3);*

(b) *10 or more years but less than 30 years of membership service is the greater of one fifty-sixth of the member’s highest average compensation multiplied by the number of years of the member’s total service credit or the benefit calculated under subsection (3); or*

(c) *30 or more years of membership service is the greater of 2% of the member’s highest average compensation multiplied by the number of years of the member’s total service credit or the benefit calculated under subsection (3).*

(3) Instead of the benefit provided under subsection (1) or (2), a member may receive a monthly benefit that is the actuarial equivalent of double the member’s accumulated contributions if that benefit is greater than the benefit the member would have received under subsection (1) or (2).”

Section 7. Section 19-3-906, MCA, is amended to read:

“19-3-906. Early retirement benefit. (1) ~~(a) The~~ *Until October 1, 2011, for a member hired prior to [the effective date of this act], the* amount of the early retirement benefit payable ~~to a member~~ *following early retirement* is the actuarial equivalent of the accrued portion of the service retirement benefit that

would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1).

(2)(b) The early retirement benefit must be determined as prescribed in 19-3-904(1), with the exception that the benefit must be reduced as follows:

(a)(i) by ~~1/2 of 1%~~ 0.5% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained *age 60 years of age* or had the member completed 30 years of membership service; and

(b)(ii) by ~~3/10 of 1%~~ 0.3% multiplied by the number of months in excess of the 60 months in subsection (2)(a) (1)(b)(i) but not to exceed 60 additional months ~~that by which~~ the retirement date precedes the date on which the member would have retired had the member attained *age 60 years of age* or had the member completed 30 years of membership service.

~~(3) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513 once the member has at least 25 years of membership service.~~

(2) *Beginning October 1, 2011, for a member hired prior to [the effective date of this act], the amount of retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1), with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.*

(3) *For a member hired on or after [the effective date of this act], the amount of the early retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 65 pursuant to 19-3-904(2),*

with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(4) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513."

Section 8. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008.

(2) An active member who *was hired prior to [the effective date of this act] and is 60 years of age or older and or was hired on or after [the effective date of this act] and is 65 years of age or older and* who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual ~~becoming~~ *who became* a member after February 24, 1991, and before *[the effective date of this act]* who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3).

(4) *A member hired on or after [the effective date of this act] who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(4)."*

Section 9. Section 19-3-1008, MCA, is amended to read:

"19-3-1008. Benefit for disability. (1) The monthly amount of the disability retirement benefit payable to a member under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to ~~one-fiftieth~~ 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(4) *The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(4) who has:*

(a) *more than 5 but less than 10 years of membership service is a retirement benefit equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;*

(b) *10 or more but less than 30 years of membership service is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or*

(c) *30 or more years of membership service is a retirement benefit equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.*

(4)(5) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature.”

Section 10. Section 19-3-1106, MCA, is amended to read:

“19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — reporting obligations — liability — exceptions. (1) A retired member under 65 years of age who was hired prior to [the effective date of this act], who has been terminated from employment for at least 90 days, and who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree’s retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retiree retired member who is 65 years of age or older and under 70 1/2 years of age, who has been terminated from employment for at least 90 days, and who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree’s current annual retirement benefits benefit, will not exceed the member’s annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree’s benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) (a) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) Except as provided in subsection (5), if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired

member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(6)(7) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 11. Section 19-3-1205, MCA, is amended to read:

"19-3-1205. Amount of survivorship benefit. ~~The~~ (1) *For a member hired prior to [the effective date of this act], the survivorship benefit payable to a the member's designated beneficiary is the actuarial equivalent of:*

(1)(a) *the accrued portion of the early retirement benefit pursuant to 19-3-906(1) that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of membership service at the time of death;*

(2)(b) *if the deceased member had attained age 50 or earned 25 years of membership service at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or*

(3)(c) *if the deceased member had attained age 60 or earned 30 years of membership service at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.*

(2) *For a member hired on or after [the effective date of this act], the survivorship benefit payable to the member's designated beneficiary is the actuarial equivalent of:*

(a) *the accrued portion of the early retirement benefit pursuant to 19-3-906(3) that would have been payable to the member commencing at age 55 if the member had not attained age 55 at the time of death;*

(b) *if the deceased member had attained age 55 at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or*

(c) *if the deceased member had attained age 65 at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death."*

Section 12. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; and

~~(b) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27%~~ of compensation must be allocated in the following order:

~~(i) to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full;~~

~~(ii)(i)~~ to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

~~(iii)(ii)~~ to the long-term disability plan trust fund to provide disability benefits to eligible members.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 13. Section 19-3-2141, MCA, is amended to read:

"19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) *For members hired prior to [the effective date of this act]:*

(a) ~~Except~~ *except* as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513;

(b) ~~An~~ *an* eligible member with at least 25 years of membership service is entitled to a disability benefit equal to ~~one-fiftieth~~ 2% of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) *For members hired on or after [the effective date of this act], the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:*

(a) *more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;*

(b) *10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or*

(c) *30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.*

~~(2)(3)~~ Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) *for members hired prior to [the effective date of this act]:*

~~(b)~~(i) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; and

(e)(ii) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years; and

(c) for members hired on or after [the effective date of this act]:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years; and

(d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

~~(3)~~(4) Application for a disability benefit must be made in accordance with 19-3-1005.

~~(4)~~(5) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

~~(5)~~(6) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

~~(6)~~(7) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

~~(7)~~(8) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

Section 14. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), of the employer's contribution:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% on July 1, 2009, continuing until the additional~~

employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

~~(i) to the administrative account used by the public employees' retirement board to meet the expenses of the defined contribution plan's startup loan, until paid in full; and~~

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

Section 15. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 370

[HB 159]

AN ACT RESTRICTING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION TO REGULATE FIREARMS, FIREARM ACCESSORIES, AND AMMUNITION; AND AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-303, 87-1-304, AND 87-3-301, MCA.

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

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) ~~The~~ *Except as provided in subsection (11), the* department shall supervise all the wildlife, fish, game, and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) ~~The~~ *Except as provided in subsection (11), the* department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or

use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) ~~The~~ *Except as provided in subsection (11), the* department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(11) *The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:*

(a) *the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;*

(b) *for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;*

(c) *the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-3-301;*

(d) *the regulation of migratory game bird hunting pursuant to 87-3-403; or*

(e) *the restriction of the use of rifles for bird hunting pursuant to 87-3-401.”*

Section 2. Section 87-1-301, MCA, is amended to read:

“87-1-301. Powers of commission. (1) *The Except as provided in subsection (7), the commission:*

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), “landowner tolerance” means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner’s property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana’s youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) *The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:*

(a) *the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;*

(b) *for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;*

(c) *the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-3-301;*

(d) *the regulation of migratory game bird hunting pursuant to 87-3-403; or*

(e) *the restriction of the use of rifles for bird hunting pursuant to 87-3-401."*

Section 3. Section 87-1-303, MCA, is amended to read:

“87-1-303. Rules for use of lands and waters. (1) *The Except as provided in 87-1-301(7), the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.*

(2) *The Except as provided in 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.”*

Section 4. Section 87-1-304, MCA, is amended to read:

“87-1-304. Fixing of seasons and bag and possession limits. (1) (a) The commission may:

- (i) fix seasons, bag limits, possession limits, and season limits;
- (ii) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and
- (iii) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf in those areas.

(b) *The Subject to the provisions of 87-1-301(7), the commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.*

(c) *The commission may declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more*

applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) The commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 5. Section 87-3-301, MCA, is amended to read:

"87-3-301. Shotgun loads regulated by department. A person may not use a shotgun to hunt deer or elk except with ~~weapon type and loads double-ought buckshot or rifled slugs~~ as specified by the department."

Approved May 12, 2011

CHAPTER NO. 371

[HB 165]

AN ACT REVISING AND CLARIFYING THE DISTRIBUTION OF PROCEEDS AND INCOME FROM CERTAIN STATE TRUST LANDS; PROVIDING THAT INCOME RECEIVED FROM CERTAIN ISLANDS, ABANDONED RIVERBEDS, RIVERBEDS, AND POWER SITES BE DEPOSITED IN THE GUARANTEE ACCOUNT AND THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; INCLUDING STATE REIMBURSEMENT FOR SCHOOL FACILITIES AS A PURPOSE OF THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; AMENDING SECTIONS 17-3-1003, 20-9-516, 77-1-102, 77-1-103, AND 77-4-208, MCA; AMENDING SECTION 32, CHAPTER 486, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-3-1003, MCA, is amended to read:

“17-3-1003. Support of state institutions. (1) ~~For~~ *Except as provided in subsection (5),* for the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid to the state treasurer, who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1), ~~and~~ (3), *and* (5), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109 and subsection (4) of this section, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

(4) The board of regents shall designate, at least once a biennium, whether the timber sale proceeds from Montana university system lands must be distributed to the beneficiaries or placed in the permanent fund.

(5) *Except as provided in 77-1-109, income received from certain lands and riverbeds pursuant to 77-1-103(4) or 77-4-208 must be deposited as follows:*

(a) *from July 1, 2011, through June 30, 2014, to the guarantee account provided for in 20-9-622; and*

(b) *on or after July 1, 2014, to the school facility and technology account provided for in 20-9-516.”*

Section 2. Section 20-9-516, MCA, is amended to read:

“20-9-516. School facility and technology account. (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools for:

- (a) major deferred maintenance;
- (b) improving energy efficiency in school facilities;
- (c) critical infrastructure in school districts;
- (d) emergency facility needs; ~~and~~
- (e) technological improvements; *and*
- (f) *state reimbursement for school facilities as provided in 20-9-371.*

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; ~~and; and~~ *and*

(e) the rental income received from power site leases as provided in 77-4-208

(c) *the income received from certain lands and riverbeds as provided in 17-3-1003(5).*”

Section 3. Section 77-1-102, MCA, is amended to read:

“77-1-102. Ownership of certain islands, and abandoned riverbeds, and riverbeds. (1) ~~All~~ *The following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:*

(a) *all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such the stream or lake as the same are shown by the United States survey thereof of the stream or lake; and*

(b) *all islands existing in the navigable streams or lakes in this state which that have not been surveyed by the government of the United States; and*

(c) *all lands which that at any time in the past comprised such constituted an island or any part thereof of an island in a navigable stream or lake, except such those lands as that are occupied by and belong to the adjacent landowners as accretions, belong to the state of Montana to be held in trust for the benefit of the public schools of the state.*

(2) *State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution.*”

Section 4. Section 77-1-103, MCA, is amended to read:

“77-1-103. Administration of lands. (1) ~~The board shall lease or sell lands under 77-1-102 77-1-102(1) in the same manner as other school lands of the state are leased and sold.~~

(2) ~~The board may sell the lands under 77-1-102(1) or lease these the lands under 77-1-102 without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.~~

(3) ~~The proceeds from the leasing and leasing and sale of such the lands under 77-1-102 shall must be disposed of in the same manner as disposition is made of the proceeds from the leasing and leasing and sale of school lands of the state.~~

(4) *The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102(2) must be deposited in accordance with 17-3-1003(5).*”

Section 5. Section 77-4-208, MCA, is amended to read:

“77-4-208. Rental for power sites — deposit of rental money in proper accounts. (1) The rental payment to the state for power sites must be paid annually or semiannually, and the rental may not be less than the full market value of the estate or interest disposed of through the granting of the lease or license. The value must be carefully ascertained from all available sources.

(2) ~~Ninety-five percent of all Beginning July 1, 2011, all rental payments received under this section must be deposited in the school facility and technology account provided for in 20-9-516. The remaining 5% of the rental payments received must be deposited annually in the public school permanent fund provided for in 20-9-621 in accordance with 17-3-1003(5).~~”

Section 6. Section 32, Chapter 486, Laws of 2009, is amended to read:

“Section 32. Coordination instruction. If House Bill No. 152 and [this act] are both passed and approved, then [section 22] of House Bill No. 152 must be amended as follows:

“NEW SECTION. **Section 22. Applicability.** [Section 18] applies to rental payments beginning ~~January 1, 2011~~ *2012 July 1, 2011.*”

Section 7. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 372

[HB 310]

AN ACT REVISING THE LAWS RELATING TO INITIATIVES AND REFERENDA; REQUIRING STATEMENTS ON PETITIONS FOR INITIATIVES AND REFERENDA AND ON THE BALLOT THAT CLEARLY INDICATE THAT A “YES” VOTE SUPPORTS A BALLOT ISSUE AND THAT A “NO” VOTE OPPOSES A BALLOT ISSUE; REQUIRING A SINGLE STATEMENT OF PURPOSE AND IMPLICATION; AMENDING SECTIONS 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-312, 13-27-315, AND 13-27-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 13-27-202, MCA, is amended to read:

“13-27-202. Recommendations — approval of form required. (1) A proponent of a ballot issue shall submit the text of the proposed *ballot* issue to the secretary of state together with draft ballot *issue* statements intended to comply with 13-27-312. Petitions may not be circulated for the purpose of signature gathering more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall forward a copy of the text of the proposed issue and statements to the legislative services division for review.

(2) (a) The legislative services division staff shall review the text and statements for clarity, consistency, and conformity with the most recent edition of the bill drafting manual furnished by the legislative services division, the requirements of 13-27-312, and any other factors that the staff considers when drafting proposed legislation.

(b) Within 14 days after submission of the text and statements, the legislative services division staff shall recommend in writing to the proponent revisions to the text and revisions to the statements to make them consistent with any recommendations for change to the text and the requirements of 13-27-312 or state that no revisions are recommended.

(c) The proponent shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended revisions. If revisions are not recommended, a response is not required.

(3) The legislative services division shall furnish a copy of the correspondence provided for in subsection (2) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(4) Before a petition may be circulated for signatures, the final text of the proposed issue and ballot statements must be submitted to the secretary of state. The secretary of state shall reject the proposed issue if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. If accepted, the secretary of state shall refer a copy of the proposed issue and statements to the attorney general for a determination as to the legal

sufficiency of the issue and for approval of the petitioner's ballot statements and for a determination pursuant to 13-27-312 as to whether a fiscal note is necessary.

(5) (a) The secretary of state shall review the legal sufficiency opinion and ballot statements of the petitioner, as approved by the attorney general and received pursuant to 13-27-312.

(b) If the attorney general approves the proposed issue, the secretary of state shall immediately send to the person submitting the proposed issue a sample petition form, including the text of the proposed issue, the statement of purpose *and implication*, and the *yes and no* statements of ~~implication~~, as prepared by the petitioner, reviewed by the legislative services division, and approved by the attorney general and in the form provided by this part. A signature gatherer may circulate the petition only in the form of the sample prepared by the secretary of state. The secretary of state shall immediately provide a copy of the sample petition form to any interested parties who have made a request to be informed of an approved petition.

(c) If the attorney general rejects the proposed issue, the secretary of state shall send written notice to the person who submitted the proposed issue of the rejection, including the attorney general's legal sufficiency opinion.

(d) If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the proposed issue."

Section 2. Section 13-27-204, MCA, is amended to read:

"13-27-204. Petition for initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.....
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-half of the counties sign this petition and the total number of voters signing this petition is, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the, 20....., general election ballot:

(Title of initiative written pursuant to 13-27-312)

(Statement of *purpose and* implication written pursuant to 13-27-312)

(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the initiative, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 3. Section 13-27-205, MCA, is amended to read:

"13-27-205. Petition for referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM
NO..... ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is, Senate (House) Bill Number will appear on the next general election ballot. If a majority of voters vote for this referendum at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number, passed by the legislature on on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)

(Statement of *purpose and* implication written pursuant to 13-27-312)

(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the referendum, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the referendum on the ballot and does not necessarily mean the signer agrees with the referendum.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 4. Section 13-27-206, MCA, is amended to read:

"13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there will be a constitutional convention:

PETITION TO PLACE INITIATIVE NO....., CALLING FOR A
CONSTITUTIONAL CONVENTION, ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is, the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the, 20....., general election ballot:

(Title of the initiative written pursuant to 13-27-312)

(Statement of *purpose and* implication written pursuant to 13-27-312)

(*Yes and no statements written pursuant to 13-27-312*)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine or 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must also contain spaces for the signature, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 5. Section 13-27-207, MCA, is amended to read:

"13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT
NO..... ON THE ELECTION BALLOT

(a) If 10% of the voters in each of one-half of the counties sign this petition and the total number of voters signing the petition is, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the, 20....., general election ballot:

(Title of the proposed constitutional amendment written pursuant to 13-27-312)

(Statement of *purpose and* implication written pursuant to 13-27-312)

(*Yes and no statements written pursuant to 13-27-312*)

(c) Voters are urged to read the complete text of the constitutional amendment, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 6. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of proposed ballot issue and statements by attorney general — preparation of fiscal note. (1) Upon receipt of a proposed ballot issue and statements from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the proposed *ballot* issue for legal sufficiency as provided in this section and shall determine whether the ballot statements comply with the requirements of this section.

(2) The attorney general shall, in reviewing the ballot statements, endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall review the ballot statements to determine if they contain the following matters:

(a) a statement of *purpose and implication*, not to exceed ~~100~~ 135 words, explaining the purpose *and implication* of the issue; and

(b) ~~statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the issue~~ *yes and no statements in the form prescribed in subsection (6).*

(3) If the proposed ballot issue has an effect on the revenue, expenditures, or fiscal liability of the state, the attorney general shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the ballot issue, is responsible for preparing the fiscal note and shall return it to the attorney general within 10 days. If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words, and the statement must be used on the petition and ballot if the issue is placed on the ballot.

(4) The ballot statements must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.

(5) Unless altered by the court under 13-27-316, the statement of purpose *and implication* is the petition title for the issue circulated by the petition and the ballot title if the issue is placed on the ballot.

(6) The ~~statements of implication~~ *yes and no statements* must be written so that a positive vote indicates support for the issue and a negative vote indicates opposition to the issue and must be placed beside the diagram provided for marking of the ballot in a manner similar to ~~but not limited to~~ the following example:

- ~~FOR YES extending the right to vote to persons 18 years of age~~
(*insert the type of ballot issue and its number*)
- ~~AGAINST NO extending the right to vote to persons 18 years of age~~
(*insert the type of ballot issue and its number*)

(7) The attorney general shall review the proposed ballot issue for legal sufficiency. As used in this part, "legal sufficiency" means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors. Review of the petition for legal sufficiency does not include consideration of the substantive legality of the issue if approved by the voters. The attorney general shall also determine if the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(8) (a) Within 30 days after receipt of the proposed issue from the secretary of state, the attorney general shall forward to the secretary of state an opinion as to the issue's legal sufficiency.

(b) If the attorney general determines that the proposed ballot issue is legally sufficient, the attorney general shall also forward to the secretary of state the petitioner's ballot statements that comply with the requirements of this section. If the attorney general determines in writing that a ballot statement clearly does not comply with the requirements of this section, the attorney general shall prepare a statement that complies with the requirements of this section, forward that statement to the secretary of state as the approved statement, and provide a copy to the petitioner. The attorney general shall give the secretary of state notice of whether the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(c) If the attorney general determines that the proposed ballot issue is not legally sufficient, the secretary of state may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-316 and the attorney general has approved or prepared ballot statements under this section."

Section 7. Section 13-27-315, MCA, is amended to read:

"13-27-315. Statements by attorney general on issues referred by legislature. Upon receipt of ~~an a~~ *ballot* issue referred by the legislature from the secretary of state pursuant to 13-27-209, the attorney general shall prepare and forward to the secretary of state, within 30 days, ballot statements as provided in 13-27-312, except that the attorney general may not prepare ~~statements a statement of purpose and~~ *implication* of a vote for or against a ballot issue if the ~~statements have~~ *statement has* been provided by the legislature."

Section 8. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form. (1) The secretary of state shall furnish to the official of each county responsible for preparation of the ballots, at the same time as the election administrator certifies the names of

the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) The secretary of state shall list for each *ballot* issue:

- (a) the number;
- (b) the method of placement on the ballot;
- (c) the title;
- (d) the attorney general's explanatory statement, if applicable;
- (e) the fiscal statement, if applicable;
- (f) the ~~statements~~ *statement of the purpose and implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot;*
- (g) *the yes and no statements;* and
- ~~(g)~~(h) a statement that the *ballot* issue conflicts with one or more issues, referenced by number, that also appear on the ballot, if applicable.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

- (a) an act referred by the legislature;
- (b) an amendment to the constitution proposed by the legislature;
- (c) an act of the legislature referred by referendum petition; or
- (d) a law or constitutional amendment proposed by initiative petition."

Section 9. Effective date. [This act] is effective January 1, 2013.

Approved May 12, 2011

CHAPTER NO. 373

[HB 460]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH BY RULE A METHOD FOR VALUING TOWNHOUSES; DEFINING "TOWNHOUSE" AND "TOWNHOME"; PROVIDING THAT THE UNIT OWNERSHIP ACT MAY APPLY TO TOWNHOUSES; CONFORMING PROVISIONS OF THE UNIT OWNERSHIP ACT WITH THE DEFINITIONS OF "TOWNHOUSE" AND "TOWNHOME"; AMENDING SECTIONS 15-8-111, 70-23-102, 70-23-103, 70-23-301, AND 76-3-203, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization-of-net-income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) (i) for condominium property, the department shall establish the value as provided in subsection (4); and

(ii) for a townhome or townhouse, as defined in 70-23-102, the department shall determine the value in a manner established by the department by rule; and

(d) as otherwise authorized in Titles 15 and 61.

(4) (a) Subject to subsection (4)(c), if sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection (4)(c), if sufficient, relevant information on income is made available to the department, the department shall use the capitalization-of-net-income method to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the construction-cost method. When using the construction-cost method, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each

individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.

(5) For purposes of taxation, assessed value is the same as appraised value.

(6) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(7) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-222.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(8) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.”

Section 2. Section 70-23-102, MCA, is amended to read:

“70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Association of unit owners” means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) “Building” means a multiple-unit building or buildings comprising a part of the property.

(3) “Common elements” means the general common elements and the limited common elements.

(4) “Common expenses” means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) “Condominium” means the ownership of single units with common elements located on property submitted to the provisions of this chapter. *The term does not include a townhome or townhouse.*

(6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

(7) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion of the land included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(8) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(9) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of undivided ownership.

(10) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(11) "Project" means a real estate condominium project whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

(12) "Property" means the land, all buildings, improvements, and structures on the land, and all easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

(13) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or other instruments or documents affecting the title to real property.

(14) "*Townhome*" or "*townhouse*" means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

~~(14)~~(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

~~(15)~~(16) "Unit designation" means the number, letter, or combination of numbers and letters designating a unit in the declaration.

~~(16)~~(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of

voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit must be considered a unit owner.”

Section 3. Section 70-23-301, MCA, is amended to read:

“70-23-301. Contents of declaration. A declaration must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of the person which must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums, *townhomes*, or *townhouses* are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable.”

Section 4. Section 76-3-203, MCA, is amended to read:

“76-3-203. Exemption for certain condominiums. Condominiums, *townhomes*, or *townhouses*, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, *townhomes*, or *townhouses* and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium, *townhome*, or *townhouse* proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.”

Section 5. Section 70-23-103, MCA, is amended to read:

“70-23-103. Applicability — submission by declaration required — optional declaration for townhouses. (1) In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees ~~thereof of the property~~ shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration ~~shall~~ *must* be executed in accordance with 70-23-301.

(2) *A declaration for a townhome or townhouse may be executed under this section. The provisions of this chapter apply to townhomes or townhouses only if a declaration is executed under this section.*”

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

Section 7. Applicability. [Section 1] applies to tax years beginning after December 31, 2011.

Approved May 12, 2011

CHAPTER NO. 374

[HB 560]

AN ACT INCREASING PUBLIC INVOLVEMENT IN THE CREATION AND OPERATION OF URBAN RENEWAL DISTRICTS; REQUIRING THE URBAN RENEWAL DISTRICT TO INCLUDE THE AMOUNT OF THE TAX INCREMENT OF THE DISTRICT IN THE REPORT FILED WITH THE MUNICIPALITY; AND AMENDING SECTIONS 7-15-4214, 7-15-4215, AND 7-15-4237, MCA.

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

Section 1. Section 7-15-4214, MCA, is amended to read:

“7-15-4214. Hearing on urban renewal plan required. (1) The local governing body shall hold a public hearing on an urban renewal plan ~~after public notice thereof prior to adoption as provided in 7-1-4131. Notice of the hearing must be published as provided in 7-1-4127, and mail notice as provided in 7-1-4129 must be given to property owners of the district.~~

(2) Upon receipt of the recommendations of the planning commission, or if no recommendations are received within ~~said~~ 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan.”

Section 2. Section 7-15-4215, MCA, is amended to read:

“7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) must be given by publication as provided in 7-1-4127 and by mailing a notice of the hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer’s tax ~~roll records~~ as the owners, reputed owners, or purchasers under contracts for deed of the property, at the address shown on the tax ~~roll record~~.

(2) The notice must:

(a) describe the time, date, place, and purpose of the hearing;

(b) ~~generally identify~~ *specify the proposed boundary of the urban renewal area affected;*

(c) ~~and~~ *outline the general scope of the urban renewal plan under consideration;*

(d) *specify the goals the municipality has in the rehabilitation and renewal of the area; and*

(e) *indicate the method of financing the urban renewal area and whether the municipality intends to use tax increment financing and bonds to be paid from tax increment financing.”*

Section 3. Section 7-15-4237, MCA, is amended to read:

“7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under *part 43 and this part* ~~and part 43~~ shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses *and the amount of the tax increment* as of the end of the fiscal year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that *the such* report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.”

Approved May 12, 2011

CHAPTER NO. 375

[HB 561]

AN ACT CHANGING THE CRITERIA FOR FACTORS INVOLVED IN THE CREATION AND OPERATION OF URBAN RENEWAL DISTRICTS; REQUIRING THE FINDINGS BY A MUNICIPALITY THAT CERTAIN URBAN RENEWAL CONDITIONS EXIST; AND AMENDING SECTION 7-15-4210, MCA.

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

Section 1. Section 7-15-4210, MCA, is amended to read:

“7-15-4210. Resolution of necessity required to utilize provisions of part. ~~No A municipality shall may not~~ exercise any of the powers hereafter ~~conferred upon authorized municipalities by this part and part 43 and this part~~ until after its local governing body ~~shall have~~ *has* adopted a resolution finding that:

(1) ~~one or more blighted areas exist in such~~ *one or more blighted areas exist in the* municipality *by finding that at least three of the factors listed in 7-15-4206(2) apply to the area or a part of the area;* and

(2) ~~the rehabilitation, redevelopment, or a combination thereof of such both of an area or areas is or areas are~~ necessary in the interest of the public health, safety, morals, or welfare of the residents of ~~such the~~ *the* municipality.”

Approved May 12, 2011

CHAPTER NO. 376

[HB 562]

AN ACT REQUIRING NOTIFICATION OF THE COUNTY AND SCHOOLS REGARDING VARIOUS PROVISIONS OF AN URBAN RENEWAL DISTRICT WITHIN THE JURISDICTION OF A MUNICIPALITY; REQUIRING NOTIFICATION OF THE INTENDED USE OF TAX INCREMENT FINANCING TO THE COUNTY AND SCHOOLS; REQUIRING THE ANNUAL REPORT OF URBAN RENEWAL DISTRICTS TO BE MADE AVAILABLE UPON REQUEST TO THE COUNTY AND SCHOOLS WITHIN THE TERRITORIAL JURISDICTION OF A MUNICIPALITY; AND AMENDING SECTIONS 7-15-4211, 7-15-4221, 7-15-4237, AND 7-15-4282, MCA.

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

Section 1. Section 7-15-4211, MCA, is amended to read:

“7-15-4211. Preparation of comprehensive development plan for municipality. For the purpose of approving an urban renewal plan and other municipal purposes, authority is hereby vested in every a municipality may:

(1) ~~to~~ prepare, ~~to~~ adopt, and ~~to~~ revise from time to time a comprehensive plan or parts thereof of a plan for the physical development of the municipality as a whole, ~~(giving due regard to the environs and metropolitan surroundings)~~ with consideration for the county and school districts that include municipal territory;

(2) ~~to~~ establish and maintain a planning commission for ~~such~~ that purpose and related municipal planning activities; and

(3) ~~to~~ make available and appropriate necessary funds ~~therefor~~ for municipal planning activities.”

Section 2. Section 7-15-4221, MCA, is amended to read:

“7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee’s or purchaser’s successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) *Any urban renewal plan proposed for modification to provide tax increment financing for the district must be proposed with consideration for the county and school districts that include municipal territory.*

~~(3)~~(4) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.

~~(4)~~(5) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan.”

Section 3. Section 7-15-4237, MCA, is amended to read:

“7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under *part 43 and this part* ~~and part 43~~ shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year. *A copy of the annual report must be made available upon request to the county and school districts that include municipal territory.*

(2) The report ~~shall~~ *must* include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of the fiscal year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that ~~such~~ *the* report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.”

Section 4. Section 7-15-4282, MCA, is amended to read:

“7-15-4282. Authorization for tax increment financing. (1) Any urban renewal plan as defined in 7-15-4206, industrial district ordinance adopted pursuant to 7-15-4299, technology district ordinance adopted pursuant to 7-15-4295, or aerospace transportation and technology district ordinance

adopted pursuant to 7-15-4296 may contain a provision or be amended to contain a provision for the segregation and application of tax increments as provided in 7-15-4282 through 7-15-4299.

(2) *The tax increment financing provision must take into account the effect on the county and school districts that include municipal territory.*"

Approved May 12, 2011

CHAPTER NO. 377

[HB 565]

AN ACT CLARIFYING REQUIREMENTS FOR PROVIDING CHILDREN WITH MENTAL HEALTH NEEDS WITH IN-STATE SERVICE ALTERNATIVES TO OUT-OF-STATE PLACEMENT; REVISING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROCEDURES FOR DETERMINING PLACEMENT OF CHILDREN IN OUT-OF-STATE SERVICES; REVISING REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 52-2-308, 52-2-310, AND 52-2-311, MCA.

WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state are able to remain in their homes, community, or the state; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to establish an in-state pool of providers and protocol to give these children opportunities for services in their homes or communities from this pool of providers as a last resort before out-of-state placements; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to report to the Legislature on the number of out-of-state placements and the attempts to continue to provide services in Montana; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placements of children have decreased by 40% in the last 4 years but still continue.

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

Section 1. Section 52-2-308, MCA, is amended to read:

"52-2-308. Rulemaking. The department shall adopt rules necessary to implement ~~52-2-301 through 52-2-304 and 52-2-309~~ *this part*. The rules must be adopted in cooperation with the committee established in 52-2-303."

Section 2. Section 52-2-310, MCA, is amended to read:

"52-2-310. Development and use of in-state pool of providers qualified provider pools. (1) In order to accomplish the goals of 52-2-301, the department shall establish a pool of qualified in-state providers identified as willing and able to meet the significant needs of high-risk children with multiagency service needs who are currently placed or may be placed out of state. ~~The~~ *Using existing staff resources, the department shall design and*

implement a process in which licensed providers qualify for the a pool by demonstrating their ability to provide mental health services for children:

~~(1)(a)~~ through use of available federal and state special revenue and state general fund money;

~~(b)~~ in the least restrictive setting available; and

~~(2)(c)~~ in accordance with the state's goal of using a wraparound philosophy of care and planning process; and

~~(d)~~ using criteria established by the department to address the specialized needs of high-risk children with multiagency service needs.

(2) (a) The department shall allow any willing and qualified in-state provider to review a case involving a high-risk child with multiagency service needs and to propose a plan of care for providing services in state to the child.

(b) Prior to contracting with a provider for the delivery of in-state services, the department must determine that the plan of care submitted by the in-state provider is both cost-effective and in the best interests of the child.

(c) If a qualified in-state provider proposes a plan of care for providing in-state services to the child, the department may not certify a child for placement with an out-of-state provider unless it denies the plan of care proposed by the in-state provider."

Section 3. Section 52-2-311, MCA, is amended to read:

"52-2-311. Out-of-state placement monitoring and reporting. (1) The department shall collect the following information regarding high-risk children with multiagency service needs:

(a) the number of children placed out of state;

(b) the reasons each child was placed out of state;

(c) the costs for each child placed out of state;

(d) the ~~efforts the department made~~ process used to avoid out-of-state placements, including:

~~(i) the number of in-state providers the department contacted about developing service alternatives for a child in or at risk of being placed in an out-of-state facility;~~

~~(ii) whether any in-state providers submitted a plan for service alternatives for the child to the department; and~~

~~(iii) if a plan for service alternatives was submitted, the reasons the plan was not implemented and the out-of-state placement was determined to be necessary;~~

~~(e) the number of children for whom plans for service alternatives were developed, implemented, and resulted in the return of a child from an out-of-state placement or prevented a child from being placed out of state; and~~

~~(f) other planning efforts to prepare for a child's return to the state; and~~

(e) the number of in-state providers participating in the pool.

(2) For children whose placement is funded in whole or in part by medicaid, the report shall include information indicating other department programs with which the child is involved.

~~(2)(3)~~ On an ongoing basis, the department shall attempt to reduce out-of-state placements.

~~(3)(4)~~ The department shall report biannually to the children, families, health, and human services interim committee concerning the information it

has collected under this section and the results of the efforts it has made to reduce out-of-state placements.”

Approved May 12, 2011

CHAPTER NO. 378

[HB 621]

AN ACT REVISING LAWS RELATED TO THE PREVENTION AND CONTROL OF AQUATIC INVASIVE SPECIES IN MONTANA; REVISING THE MONTANA AQUATIC INVASIVE SPECIES ACT; AUTHORIZING COLLABORATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ELIMINATING THE COORDINATING AUTHORITY; AUTHORIZING THE USE OF QUARANTINE MEASURES IN AN INVASIVE SPECIES MANAGEMENT AREA; APPROPRIATING FUNDS FROM THE STATE GENERAL FUND; AMENDING SECTIONS 80-7-1002, 80-7-1003, 80-7-1005, 80-7-1006, 80-7-1007, 80-7-1008, AND 80-7-1011, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 80-7-1002, MCA, is amended to read:

“80-7-1002. Legislative findings and purpose. (1) The legislature finds that:

(a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana;

(b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (*Myriophyllum spicatum*) and the introduction, importation, and infestation of additional invasive species ~~not yet present~~ in Montana, such as the zebra mussel (*Dreissena polymorpha*) and the quagga mussel (*Dreissena bugensis*), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy;

(c) as infestations of threatening invasive species move ever closer to Montana’s borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans;

(d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate;

(e) the use of check stations, at which ~~the exterior of~~ vessels *and trailers transporting vessels* may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction, importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and

(f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities.

(2) The purpose of this part is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the

public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the intrastate movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans."

Section 2. Section 80-7-1003, MCA, is amended to read:

"80-7-1003. Definitions. As used in this part, the following definitions apply:

(1) "Departments" means the department of agriculture, ~~and the department of fish, wildlife, and parks, and the department of natural resources and conservation.~~

(2) "Invasive species" means, upon the mutual agreement of the directors of the departments, ~~of agriculture and fish, wildlife, and parks,~~ a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health.

(3) "Invasive species management area" means a designation made by a department for a specific area; ~~or for a body or bodies of water, or for the entire state~~ for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area.

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

(5) "Vessel" has the meaning provided in 61-1-101."

Section 3. Section 80-7-1005, MCA, is amended to read:

"80-7-1005. Cooperative agreement for invasive species detection and control. (1) In order to implement, administer, and accomplish the purposes of this part, the departments, collectively or individually, shall enter into a cooperative agreement with each other or may enter into an agreement with any person with the appropriate expertise and administrative capacity to perform the obligations of the agreement.

(2) Prior to entering an agreement with a person other than a department, the departments shall work in collaboration with each other to coordinate their respective responsibilities in order to further the purposes of this part.

(3) A cooperative agreement may include provisions for funding to implement the agreement.

~~(4) The overall coordinating authority is the department of agriculture."~~

Section 4. Section 80-7-1006, MCA, is amended to read:

"80-7-1006. Departmental responsibilities. (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans shall identify

and prioritize threats and determine appropriate actions, in the following order of priority, related to:

- (a) public awareness and education;
- (b) prevention and detection of invasive species, including the use of invasive species management areas authorized under 80-7-1008;
- (c) management, control, and restoration of infested areas; and
- (d) emergency response.

(4) *The departments may enforce quarantine regulations and measures imposed by law or rule in an invasive species management area, including the mandatory inspection of any interior portion of a vessel that may contain water for the presence of an invasive species.*

(4)(5) The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species.”

Section 5. Section 80-7-1007, MCA, is amended to read:

“80-7-1007. Rulemaking authority. Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments’ jurisdiction, including rules for the:

- (1) implementation of ~~an~~ *the* invasive species strategic plan *adopted pursuant to 80-7-1006*;
- (2) transportation of an invasive species or any agent likely to be a carrier of an invasive species;
- (3) designation, regulation, and treatment of an invasive species management area, including rules pertaining to:
 - (a) *the use of quarantine regulations and measures*;
 - (b) the movement of vessels within, to, or from the area; and
 - (c) the inspection and cleaning of ~~the exterior of~~ vessels moving within, to, or from the area; and
- (4) manner in which vessels, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species.”

Section 6. Section 80-7-1008, MCA, is amended to read:

“80-7-1008. Invasive species management area — authorization. (1) When an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land; *or* for a body or bodies of water; ~~or for the entire state~~ for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species.

(2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of this part.

(3) The designation of an invasive species management area must specify:

- (a) the invasive species present or considered threatening; and
- (b) ~~(i) subject to subsection (3)(b)(ii),~~ the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to:
 - (i) *the use of quarantine measures*;

(ii) the movement of vessels within, to, and from the area; and

(iii) whether check stations will be used to inspect and clean ~~the exterior of~~ vessels moving within, to, or from the area. *A department may conduct mandatory inspections of any interior portion of a vessel that may contain water only if the department has included the use of mandatory inspections as part of quarantine measures established pursuant to subsection (3)(b)(i).*

~~(ii) If the invasive species management area encompasses the entire state, departmental authority to prescribe requirements for cleaning and inspecting the exterior of vessels traveling within the state is limited to those vessels required to stop at a check station pursuant to 80-7-1011(3)(b).~~

(4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs.”

Section 7. Section 80-7-1011, MCA, is amended to read:

“80-7-1011. Check stations. (1) The departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued.

(2) At a check station, the departments may examine ~~the exterior of~~ vessels and trailers transporting vessels for the presence of an invasive species and compliance with regulations imposed under 80-7-1008(3)(b) and with this section. *A department may examine any interior portion of a vessel that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to 80-7-1008(3)(b)(i).*

(3) ~~(a) Except as provided in subsection (3)(b), the~~ The owner, operator, or person in possession of a vessel shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury.

~~(b) If a check station is established under regulations pertaining to a statewide invasive species management area, a stop at that check station is required only for a vehicle transporting a vessel, excluding vessels that have never been used.~~

(4) If during an inspection of ~~the exterior of~~ a vessel or a trailer transporting a vessel the presence of an invasive species is detected ~~upon the exterior of the vessel~~, that vessel or trailer may not leave the check station until it is cleaned and decontaminated in a manner established in accordance with 80-7-1008(3)(b).”

Section 8. Appropriations from state general fund. For the biennium beginning July 1, 2011, there is appropriated:

(1) to the department of agriculture \$558,000 from the state general fund for the prevention and control of any nonnative, aquatic invasive species pursuant to Title 80, chapter 7, part 10;

(2) to the department of fish, wildlife, and parks \$150,000 from the state general fund for the prevention and control of any nonnative, aquatic invasive species pursuant to Title 80, chapter 7, part 10; and

(3) to the department of natural resources and conservation \$190,000 from the state general fund for the prevention and control of aquatic noxious weeds pursuant to Title 80, chapter 7, part 10.

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 379

[HB 641]

AN ACT REVISING THE PROCESS FOR THE REVIEW OF TAX EXPENDITURES; PROVIDING THAT THE DEPARTMENT OF REVENUE IS REQUIRED TO REPORT CERTAIN TAX EXPENDITURES IN THE BIENNIAL REPORT AND MAKE IT AVAILABLE TO THE PUBLIC; ALLOWING A FEE FOR PUBLISHING COSTS OF THE BIENNIAL REPORT; ENCOURAGING A STATEMENT OF PURPOSE IN TAX EXPENDITURE LEGISLATION; AMENDING SECTION 15-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-1-205, MCA, is amended to read:

“15-1-205. Biennial report — contents. (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature *and the public* a report of the department showing all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report *for the legislature*.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

(3) The report or supplements to the report ~~may~~ *must* also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law;

(d) *the year of enactment and provision of the Montana Code Annotated granting the tax benefits in subsection (3)(a); and*

(e) *the number of taxpayers benefiting from each of the tax provisions listed in subsection (3)(a).*

(4) ~~The~~ *A distributional analysis of the* data described in subsection (3), ~~if reported,~~ must be related to the income *level* and age of the taxpayer whenever the information is available.

(5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(9) *The department shall provide an internet version of the report free of charge to the public and shall charge a fee for paper copies that is commensurate with the cost of printing the report.*

Section 2. Tax expenditure criteria — legislation. (1) The legislature recognizes the value of relevant information when making determinations regarding tax policy and tax expenditures. The legislature also recognizes the need to reevaluate tax expenditures after enactment. In consideration of these policy goals, the legislature encourages a policy of providing an explicit purpose of a tax expenditure and termination dates of no more than 6 years in any legislation creating, expanding, or continuing a tax expenditure.

(2) As used in this section, the term “tax expenditures” means those revenue losses attributable to provisions of Montana tax laws that allow a special exclusion, exemption, or deduction from gross income or that provide a special credit, a preferential rate of tax, or a deferral of tax liability including:

(a) personal income and corporation license tax exemptions;

(b) property tax exemptions for which application to the department is necessary;

(c) deferral of income;

(d) credits allowed against Montana personal income tax or Montana corporation license tax;

(e) deductions from income; and

(f) any other identifiable preferential treatment of income or property.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 5, chapter 4, part 1, and the provisions of Title 5, chapter 4, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 380

[HB 642]

AN ACT PROVIDING FOR A SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT; PROVIDING FOR MEMBERSHIP AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Select committee on efficiency in government — membership. (1) There is a select committee on efficiency in government.

(2) The committee is composed of 12 members appointed as follows:

(a) six members of the house of representatives, three of whom must be appointed by the speaker of the house and three of whom must be appointed by the minority leader; and

(b) six members of the senate, three of whom must be appointed by the president and three of whom must be appointed by the minority leader.

(3) The president of the senate shall designate one of the members as the presiding officer of the committee. The committee may elect any other officers it considers to be advisable.

(4) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

(5) The legislative services division shall provide staff assistance to the committee, and the committee may receive staff assistance from the legislative fiscal division, the legislative audit division, and the office of budget and program planning. Agencies of the executive branch, including the Montana university system, and the judicial branch shall provide information upon request. The committee may contract with other entities as necessary to obtain adequate and necessary information and analysis and may request specific audits from the legislative audit committee.

Section 2. Committee duties — evaluation of priority budgeting systems — reporting. (1) The committee shall:

(a) identify states that have implemented a priority budgeting system;

(b) analyze the approaches taken by the states identified to implement a priority budgeting system, the types of performance measurement used by the states, how decision matrices are developed and implemented to set priorities, and the results experienced;

(c) document long-term issues that will affect Montana's budget in the future, including federal mandates, the potential of less federal funding, and the implications of funding public employee retirement plans and other obligations owed by the state;

(d) in the context of anticipated, long-term pressures on the state budget, investigate and document the advantages of the several states' priority budgeting systems as compared to the baseline budgeting system used by Montana pursuant to Title 17, chapter 7;

(e) focus its attention on ascertaining the efficiency and effectiveness of state activities in three general areas, as provided in subsection (2).

(2) The study must attempt to determine areas of efficiency and effectiveness in the following areas:

(a) health care, particularly matters of access, delivery, and affordability. Concepts for consideration include but are not limited to:

(i) the objective measurement and value of the Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) and the western interstate commission for higher education programs and an examination of ways to increase the number of Montana medical students returning to Montana to practice medicine;

(ii) the identification of the core programs within the department of public health and human services that need to be prioritized and funded;

(iii) the development of a strategy to address the financial and provider implications posed by the significant increase (nearly doubling) in medicaid rolls that is projected to occur by 2017;

(iv) options for leveraging large information technology system replacements, such as the supplemental nutritional assistance program (SNAP), temporary assistance for needy families (TANF), and the medicaid management information system (MMIS), within the department of public health and human services to make interaction among government agencies, providers, and beneficiaries more seamless and to ensure that proper mechanisms are in place to reduce or eliminate fraud, waste, and abuse;

(v) current regulatory requirements affecting health care providers and consumers, including identifying areas in which regulatory requirements can be modified to reduce their burden;

(vi) a review of statutes that address the licensing of health care professionals to ensure that the licensing requirements are appropriate for current and future health care work practices; and

(vii) other concepts identified by the committee.

(b) technology, particularly matters of availability, access, development, deployment, use, and integration. Concepts for consideration include but are not limited to:

(i) the elimination of dual data entry by government employees;

(ii) movement toward the concept of a paperless office to the maximum extent possible by eliminating the use and storage of paper;

(iii) focusing on increasing internet-based services, including the use of electronic forms, and creating financial incentives for the public to migrate to using internet-based services;

(iv) persuading individuals and entities to be responsible for the accuracy of the information and data that they provide to governmental entities;

(v) ensuring that a cohesive plan exists for the state's information systems to be able to support new technology initiatives, including the increased demand and need for videoconferencing;

(vi) evaluating the use of and, where appropriate, providing for the implementation of new delivery channels, such as the expanded use of the internet and mobile computing with social network tools;

(vii) leveraging Montana's investment in the state's two data centers and related infrastructure;

(viii) the practicality of various private-public partnerships to deliver services and the steps to be taken to enter or complete the partnerships; and

(ix) alternatives by which the concepts outlined in this subsection (2)(b) can be accomplished while preserving the security and integrity of consumer and state data.

(c) natural resources, particularly incentives for and impediments to development, adding value, transporting, and conservation. Concepts for consideration include but are not limited to:

- (i) the elimination of redundant regulatory processes;
- (ii) the methods and means to facilitate the timely review and authorization of projects, including mitigating postreview and postauthorization administrative or legal challenges;
- (iii) alternatives for strengthening the threshold of legal standing for purposes of challenging procedural or substantive permitting decisions;
- (iv) options for creating and using electronic forms and authorizations to streamline project startup, reporting, monitoring, continuation, and expansion;
- (v) alternatives for implementing accountability in regulatory decisions;
- (vi) the establishment of one process leading to the issuance of a permit. The process should include all governmental entities involved in permitting a project and ensure efficient and effective public participation whenever required or advisable.
- (vii) the development and implementation of an incentive-based tax system that provides predictability and stability for new and continued growth of natural resource development;
- (viii) the potential for new technologies to advance the development of innovative natural resource industries and sectors in Montana; and
- (ix) the evaluation of the needs and requirements to facilitate investment and financing of natural resource development projects in Montana.

(3) In order to ensure that state resources are being used effectively and efficiently, the committee may:

- (a) evaluate the coordination of projects and programs within the state, including projects and programs that involve the sharing, distribution, or interaction of resources within state government and between state government and federal, tribal, or local jurisdictions;
- (b) determine the legislative purpose of specific projects and programs and whether the purpose is being accomplished in an efficient and effective manner. If the committee determines that the legislative purpose is not being accomplished, the committee shall report the basis of the determination and recommend, with proposed legislation, a statutory solution to achieve the legislative purpose or terminate the project or program.
- (c) determine the adequacy of public notice and opportunity for comment and participation in project or program design or administration;
- (d) determine the transparency of project or program design and implementation;
- (e) evaluate the implementation and integrity of projects and programs;
- (f) determine the extent to which duplication and waste is prevented under current law and administration and recommend, through proposed legislation, how to further prevent or eliminate duplication and waste; and
- (g) within the context of efficiency and effectiveness and as determined to be advisable by the committee, examine other state matters of project or program design, implementation, or administration.

(4) At its first meeting, the committee shall establish its mission, goals, and objectives and specific problems to be addressed. The committee shall also establish a work plan and maintain a website to foster and ensure participation, accountability, and transparency. The website must:

- (a) list the committee membership and contact information and the committee's stated mission, goals, and objectives;
 - (b) include a calendar of committee activities, including meeting dates, times, and venues;
 - (c) identify the projects and programs under committee examination;
 - (d) provide or provide a link to relevant economic, financial, demographic, and other information provided to the committee;
 - (e) establish and maintain links to federal, state, and local government websites that contain information on opportunities for citizen participation and input; and
 - (f) provide any other information that the committee considers relevant.
- (5) (a) The committee shall report to the legislative council, the legislative finance committee, and the legislative audit committee if requested or if considered advisable by the committee.
- (b) The committee shall prepare a final report of its findings and conclusions and of its recommendations and shall prepare draft legislation whenever appropriate. The committee shall submit the final report to the governor and the 63rd legislature, as provided in 5-11-210.

Section 3. Appropriation. There is appropriated \$100,000 from the general fund to the legislative services division for the biennium beginning July 1, 2011, to support the activities of the select committee on efficiency in government established in [section 1].

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2011.

Section 5. Termination. [This act] terminates December 31, 2012.

Approved May 12, 2011

CHAPTER NO. 381

[SB 166]

AN ACT ALLOWING A TAXPAYER THAT HAS AN INDIVIDUAL INCOME TAX LIABILITY FOR THE CURRENT YEAR OF \$200 OR LESS TO PAY THE ENTIRE AMOUNT OF THE TAX DUE, WITHOUT PENALTY OR INTEREST, WHEN FILING AN EXTENDED RETURN; AMENDING SECTIONS 15-1-216 AND 15-30-2604, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in 15-30-2604(2)(c) and subsection (2)(b) of this section, a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 25, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) ~~The~~ *Except as provided in 15-30-2604(2)(c), the* penalty imposed under subsection (2)(a) or (2)(b) *of this section* accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) ~~Interest~~ *Except as provided in 15-30-2604(2)(c), interest* on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. ~~Interest~~ *Except as provided in 15-30-2604(2)(c), interest* accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) ~~Penalty~~ *Except as provided in 15-30-2604, penalty* and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)”

Section 2. Section 15-30-2604, MCA, is amended to read:

“15-30-2604. Time for filing — extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer’s fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April 15 following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be attached to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve ~~any~~ *the* taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

(2) (a) Subject to subsections (2)(b) and (2)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer’s return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) ~~On~~ *Except as provided in subsection (2)(c),* on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year’s tax liability or 100% of the previous year’s tax liability.

(e)(ii) The remaining tax, penalty, and interest of the current year’s tax liability not paid under subsection (2)(b)(i) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) *A taxpayer that has a tax liability of \$200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (2)(a). If the tax is not paid on or before the due date of the return under subsection (2)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.*

(3) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) ~~The~~ *Except as provided in subsection (2)(c),* the extension of time for filing a return is not an extension of time for the payment of taxes.”

Section 3. Applicability. [This act] applies to the tax reporting periods beginning after December 31, 2011.

Approved May 12, 2011

CHAPTER NO. 382

[SB 206]

AN ACT REVISING THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO EXAMINE A 1-MILE-WIDE FACILITY SITING CORRIDOR ALONG THE FACILITY ROUTE WHEN CONDUCTING A REVIEW IN ACCORDANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT IN CONJUNCTION WITH AN APPLICATION FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT; EXEMPTING SITING MODIFICATIONS WITHIN THE FACILITY SITING CORRIDOR FROM TITLE 75, CHAPTER 1, PART 2; REQUIRING FACILITIES TO BE SITED IN FEDERALLY DESIGNATED ENERGY CORRIDORS WHEN COMPATIBLE WITH OTHER SITING AND RELIABILITY REQUIREMENTS; AMENDING

SECTIONS 75-20-104, 75-20-301, AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 75-20-104, MCA, is amended to read:

“75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Addition thereto” means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) “Application” means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) “Associated facilities” includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) “Board” means the board of environmental review provided for in 2-15-3502.

(5) “Certificate” means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) “Commence to construct” means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) “Department” means the department of environmental quality provided for in 2-15-3501.

(8) “Facility” means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern,

state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "*Transmission reliability agencies*" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the Midwest reliability organization.

~~(12)~~(13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

- (a) installing larger conductors;
- (b) replacing insulators;
- (c) replacing pole or tower structures; or
- (d) changing structure spacing, design, or guying.

~~(13)~~(14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) in the case of an electric, gas, or liquid transmission line or aqueduct:
 - (i) what part, if any, of the line or aqueduct will be located underground;
 - (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and
 - (iii) that the facility will serve the interests of utility system economy and reliability;
- (e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;
- (f) that the facility will serve the public interest, convenience, and necessity;
- (g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- (h) that the use of public lands or federally designated energy corridors for location of the a facility defined in 75-20-104(8)(a) or (8)(b) was evaluated and

public lands or *federally designated energy corridors for that facility* were selected whenever their use is as economically practicable as the use of private lands was compatible with:

(i) the requirements of subsections (1)(a) through (1)(g); and

(ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined in 75-20-104(8)(a).

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:

(i) a violation of a law or standard that protects the environment; or

(ii) a violation of a law or standard that protects the public health and safety.

(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate.”

Section 3. Section 75-20-303, MCA, is amended to read:

“75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.

(5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 1-mile-wide facility siting corridor along the facility route.

(b) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide corridor in accordance with 75-20-301.

(c) If the certificate holder complies with subsection (6), a certificate holder may modify the siting of the facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate siting is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.

(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility location and the proposed adjustment.

(b) The certificate holder may construct the facility as described in the submission unless the department notifies the certificate holder within 15 days of the submission that the department has determined that:

(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the department would have selected a different location for the facility; or

(ii) the adjustment would materially increase unmitigated adverse impacts.

(c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant to subsection (6)(a) is not subject to:

(i) Title 75, chapter 1, part 2;

(ii) a certificate amendment under 75-20-219; or

(iii) a board review under 75-20-223.”

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to applications for a certificate under the Major Facility Siting Act filed on or after [the effective date of this act].

Approved May 12, 2011

CHAPTER NO. 383

[SB 212]

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE WILD BUFFALO OR BISON; REQUIRING A MANAGEMENT PLAN BEFORE WILD BUFFALO OR BISON MAY BE RELEASED OR TRANSPLANTED ONTO PRIVATE OR PUBLIC LAND; AMENDING SECTION 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-216, MCA, is amended to read:

“87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious disease, pursuant to 87-2-730. *The department may, following consultation with*

the department of livestock, adopt rules to authorize the taking of bison where and when necessary to prevent the transmission of a contagious disease.

~~(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.~~

(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.

(4) The department may not release, transplant, or allow wild buffalo or bison on any private or public land in Montana that has not been authorized for that use by the private or public owner.

(5) Subject to subsection (4), the department shall develop and adopt a management plan before any wild buffalo or bison under the department's jurisdiction may be released or transplanted onto private or public land in Montana. A plan must include but is not limited to:

(a) measures to comply with any applicable animal health protocol required under Title 81, under subsection (2)(b), or by the state veterinarian;

(b) any animal identification and tracking protocol required by the department of livestock to identify the origin and track the movement of wild buffalo or bison for the purposes of subsections (2)(b) and (5)(c);

(c) animal containment measures that ensure that any animal transplanted or released on private or public land will be contained in designated areas. Containment measures must include but are not limited to:

(i) any fencing required;

(ii) contingency plans to expeditiously relocate wild buffalo or bison that enter private or public property where the presence of the animals is not authorized by the private or public owner;

(iii) contingency plans to expeditiously fund and construct more effective containment measures in the event of an escape; and

(iv) contingency plans to eliminate or decrease the size of designated areas, including the expeditious relocation of wild buffalo or bison if the department is unable to effectively manage or contain the wild buffalo or bison.

(d) a reasonable means of protecting public safety and emergency measures to be implemented if public safety may be threatened;

(e) a reasonable maximum carrying capacity for any proposed designated area using sound management principles, including but not limited to forage-based carrying capacity, and methods for not exceeding that carrying capacity; and

(f) identification of long-term, stable funding sources that would be dedicated to implementing the provisions of the management plan for each designated area.

(6) When developing a management plan in accordance with subsection (5), the department shall provide the opportunity for public comment and hold a public hearing in the affected county or counties. Prior to making a decision to release or transplant wild buffalo or bison onto private or public land in Montana, the department shall respond to all public comment received and publish a full record of the proceedings at any public hearing.

(7) The department is liable for all costs incurred, including costs arising from protecting public safety, and any damage to private property that occurs as a result of the department's failure to meet the requirements of subsection (5).

(4)(8) When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock.”

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Approved May 12, 2011

CHAPTER NO. 384

[SB 279]

AN ACT PROVIDING AN EXCEPTION TO THE OFFENSE OF CARRYING A CONCEALED WEAPON FOR LEGISLATIVE SECURITY STAFF IN THE STATE CAPITOL WHO HAVE BEEN ISSUED A CONCEALED WEAPON PERMIT; PROVIDING THAT A LOCAL ORDINANCE MAY NOT PROHIBIT LEGISLATIVE SECURITY STAFF WITH A CONCEALED WEAPON PERMIT FROM CARRYING A CONCEALED WEAPON IN THE STATE CAPITOL; AND AMENDING SECTIONS 45-8-317, 45-8-328, AND 45-8-351, MCA.

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

Section 1. Section 45-8-317, MCA, is amended to read:

“45-8-317. Exceptions. (1) Section 45-8-316 does not apply to:

- (a) any peace officer of the state of Montana or of another state who has the power to make arrests;
- (b) any officer of the United States government authorized to carry a concealed weapon;
- (c) a person in actual service as a member of the national guard;
- (d) a person summoned to the aid of any of the persons named in subsections (1)(a) through (1)(c);
- (e) a civil officer or the officer’s deputy engaged in the discharge of official business;
- (f) a probation and parole officer authorized to carry a firearm under 46-23-1002;
- (g) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329;
- (h) an agent of the department of justice or a criminal investigator in a county attorney’s office;
- (i) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; ~~or~~
- (j) the carrying of arms on one’s own premises or at one’s home or place of business; *or*

(k) *the carrying of a concealed weapon in the state capitol by a legislative security officer who has been issued a permit under 45-8-321 or with a permit recognized under 45-8-329.*

(2) With regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section.”

Section 2. Section 45-8-328, MCA, is amended to read:

“45-8-328. Carrying concealed weapon in prohibited place — penalty. (1) *Except for legislative security officers authorized to carry a concealed weapon in the state capitol as provided in 45-8-317(1)(k), a person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:*

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution’s normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution’s drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution’s financial services or is using the institution’s financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.”

Section 3. Section 45-8-351, MCA, is amended to read:

“45-8-351. Restriction on local government regulation of firearms.

(1) Except as provided in subsection (2), ~~no~~ a county, city, town, consolidated local government, or other local government unit may *not* prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) ~~Nothing contained herein shall allow in this section allows~~ any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, ~~nor shall anything contained herein or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.~~

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.”

Approved May 12, 2011

CHAPTER NO. 385

[SB 305]

AN ACT REVISING MONTANA'S ENERGY POLICY; AMENDING SECTION 90-4-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 90-4-1001, MCA, is amended to read:

“90-4-1001. State energy policy goal statement statements. (1) It is the policy of the state of Montana to:

(a) promote energy efficiency, conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens;

(b) enhance existing energy development and create new diversified energy development from all of Montana's abundant energy resources;

(c) promote development of projects using advanced technologies that convert coal into electricity, synthetic petroleum products, hydrogen, methane, natural gas, and chemical feedstocks;

(d) increase utilization of Montana's vast coal reserves in an environmentally sound manner that includes the mitigation of greenhouse gas and other emissions;

(e) increase local oil and gas exploration and development to provide high-paying jobs and to strengthen Montana's economy;

(f) expand exploration and technological innovation, including using carbon dioxide for enhanced oil recovery in declining oil fields to increase output;

(g) expand Montana's petroleum refining industry as a significant contributor to Montana's manufacturing sector in supplying the transportation energy needs of Montana and the region;

(h) develop biomass plants to generate heat for industrial use, electricity, or both, and as a means to manage Montana's forests;

(i) promote the generation of low-cost electricity with large-scale utility wind generation and small-scale distributed generation;

(j) build new transmission lines in the state, while noting that the need for new transmission lines may be mitigated by focusing on energy efficiency, distributed energy, demand response, and smart grid technologies;

(k) increase the capacity of existing transmission lines in existing corridors and maximize the potential of existing transmission lines;

(l) develop new transmission lines, pipelines, and other energy infrastructure in Montana by working closely with all affected stakeholders, including local governments, in the preliminary stages of development;

(m) address the interests of property owners and property rights as soon as practicable when developing a project to provide time to consider a variety of options as easements are secured;

(n) ensure that the costs of transmission lines that allow for the export of Montana-generated electricity are borne by those who will benefit from the lines in order to protect Montana's ratepayers from the costs of serving others;

(o) strengthen Montana's level of participation in regional transmission efforts and organizations, recognizing that endeavors to improve the management of the transmission grid often require a broad, regional approach;

(p) use new and innovative technologies, such as compressed air energy storage, batteries, flywheels, hydrogen production, smart grid, smart garage, and intrahour balancing services to address wind integration;

(q) utilize modeling and high-capacity computer technology to quantify the benefits of geographic diversity and for regional planning in the siting of future wind development facilities in order to optimize usable power generation and mitigate firming needs;

(r) review potential impacts to landscapes, wildlife, and existing land uses, including recreation and agriculture when developing wind generation;

(s) develop contracts between qualifying small power production facilities, as defined in 69-3-601, and utilities, which facilitate the development of small power production facilities by identifying fair and reasonable costs for integration of their power;

(t) monitor existing energy incentives to determine if they are cost-effective, noting that incentives are a temporary tool to implement and promote:

(i) new technologies;

(ii) new fuel sources;

(iii) efficiency and conservation; and

(iv) energy diversity;

(u) enhance Montana's overall management responsibilities, both fiduciary and multiple-use, pursuant to The Enabling Act of the state of Montana, Article X of the Montana constitution, and Title 7, chapter 1, in pursuing energy development on state lands;

(v) develop and use best management practices for energy development on state lands;

(w) develop and emphasize building performance standards for efficiency as an alternative to prescriptive standards in order to encourage innovations that may result in more comfort for the property owner and less energy use at a lower cost; and

(x) ensure that adequate amounts of the electrical energy produced at the lowest cost in this state are reserved for Montana's families, businesses, and industries.

(2) In pursuing ~~this goal~~ these goal statements, it is the policy of the state of Montana to:

(a) ~~recognize~~ consider that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) develop Montana's existing and new, diversified energy resources to provide low-cost electricity, gas, and liquid fuels needed to drive economic growth and self sufficiency;

(c) reduce the nation's reliance on foreign oil that often comes from unfriendly countries around the world;

~~(b)(d) review this~~ *consider reviewing these* energy policy ~~statement~~ *statements* and any future changes pursuant to 90-4-1003 so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy; ~~and~~

~~(e)(e)~~ adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011; *and*

~~(f)~~ *consider revisions to the state transportation energy policy and the alternative fuels policy and implementing guidelines, if necessary."*

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

Approved May 12, 2011

CHAPTER NO. 386

[SB 338]

AN ACT PROVIDING RESTRICTIONS FOR STATE OFFICERS WITH REGARD TO PUBLIC SERVICE ANNOUNCEMENTS; PROVIDING A PENALTY; PROVIDING FOR REPORTING ON THE EXPENDITURE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS; AND AMENDING SECTIONS 2-2-121, 2-2-136, AND 17-2-304, MCA.

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

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) (a) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) *A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.*

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 2. Section 2-2-136, MCA, is amended to read:

"2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) (a) ~~If~~ *Except as provided in subsection (2)(b), if* the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000, ~~and~~ ~~if~~.

(b) *If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.*

(c) *If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee.*

The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 3. Section 17-2-304, MCA, is amended to read:

"17-2-304. Reports required. (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by September 15:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance; ~~and~~

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance; *and*

(e) *all expenditures made by the state agency in the preceding 12 months that are related to the production and distribution of public service announcements.*

(2) The director of the department of administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1) or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months."

Approved May 12, 2011

CHAPTER NO. 387

[HB 5]

AN ACT GENERALLY REVISING LAWS RELATING TO CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2013; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT TO THE STATE GENERAL FUND; REVISING REQUIREMENTS FOR CIGARETTE TAX REVENUE; AMENDING SECTION 17-7-205, MCA; AMENDING SECTION 2, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 2, CHAPTER 478, LAWS OF 2009, AND SECTION 6, CHAPTER 478, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. For the purposes of [sections 1 through 12], unless otherwise stated, the following definitions apply:

(1) "Authority only" means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, and university funds.

(2) "Capital project" means the acquisition of land or improvements or the planning, capital construction, environmental cleanup, renovation, software development, furnishing, or major repair projects authorized in [sections 1 through 12].

(3) "LRBP" means the long-range building program account in the capital projects fund type.

(4) "Other funding sources" means money other than LRBP, state special revenue fund, or federal special revenue money that accrues to an agency under the provisions of law.

Section 2. Capital projects appropriations and authorizations. The following money is appropriated to the department of administration for the indicated capital projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
DEPARTMENT OF ADMINISTRATION						
Install Fire Protection Systems, Montana Law Enforcement Academy	600,000					600,000
Elevator and ADA Modifications, Capitol Complex		800,000				800,000
Mechanical and Energy Projects, Capitol Complex		1,592,500				1,592,500
Spending Authority, Utility Energy Conservation Funds					1,000,000	1,000,000
Authority-only funds consist of utility company energy conservation funds.						
Authority to Spend Federal Grant Funds			5,000,000			5,000,000

DEPARTMENT OF CORRECTIONS			
Repair Building 15 Roof, Riverside Youth Correctional Facility, Boulder	215,000		215,000
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Hatchery Maintenance	575,000	575,000	1,150,000
Administrative Facilities Repair and Maintenance	1,570,500		1,570,500
DEPARTMENT OF MILITARY AFFAIRS			
Replace Armory Roofs, Statewide		930,000	930,000
MONTANA UNIVERSITIES AND COLLEGES			
Install Fire Protection Systems, Montana University System	530,000	260,000	790,000
Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.			
Hazard Mitigation Projects, Montana University System	875,000	2,850,000	1,075,000 4,800,000
Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.			
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
Replace Security Key System - Montana Developmental Center, Boulder	200,000		200,000
Preliminary Design - SW Montana Veterans' Home, Butte	475,000		475,000
Repair Natural Gas Distribution System, Montana State Hospital, Warm Springs	250,000		250,000
DEPARTMENT OF TRANSPORTATION			
Equipment Storage Buildings, Statewide	2,158,000		2,158,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Aircraft Hangar, Kalispell		250,000	250,000
Other funds consist of proprietary funds.			

Section 3. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Parks Program		2,351,000	1,700,000			4,051,000
Future Fisheries		1,274,000				1,274,000
FAS Site Protection		1,474,000	400,000			1,874,000
Upland Game Bird Program		1,181,800				1,181,800
Grant Programs/Federal Projects		258,000	2,000,000			2,258,000
Milltown Dam Park Improvements		927,530	730,500			1,658,030
Wildlife Habitat Maintenance		970,000				970,000
Dam Maintenance		50,000				50,000
Smith River Corridor Enhancements		150,000				150,000
Waterfowl Program		509,000				509,000
Community Fishing Ponds		50,000				50,000

If House Bill No. 316 is not passed and approved or if House Bill No. 316 is passed and approved in a form that retains the \$500,000 allocation to the department of fish, wildlife, and parks in 15-38-202 for the purposes of 87-1-283, then \$1,000,000 of the state special revenue appropriation for Future Fisheries is appropriated from the allocation provided for in 15-38-202.

If House Bill No. 209 is passed and approved and if House Bill No. 209 amends 87-1-242(3) and (4) by allocating 50% of the money to secure wildlife habitat pursuant to 87-1-209 and 50% of the money to the maintenance account established in 87-1-230, then the state special revenue appropriation for Wildlife Habitat Maintenance is increased by \$830,000.

(2) Authority is being granted to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the university of Montana from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, UM-All Campuses						6,000,000 6,000,000

(3) Authority is being granted to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by Montana state university from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, MSU-All Campuses						6,000,000 6,000,000

(4) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Federal Spending Authority			2,500,000			2,500,000

(5) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Statewide Maintenance, Repair, and Small Projects		2,142,000				2,142,000

Section 4. Land acquisition appropriation. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreements:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Habitat Montana		8,668,000	200,000			8,868,000
Fishing Access Site Acquisition		279,000				279,000
Bighorn Sheep Habitat		538,000				538,000
Home to Hunt Access		600,000				600,000

If House Bill No. 209 is passed and approved and if House Bill No. 209 amends 87-1-242(3) and (4) by allocating 50% of the money to secure wildlife habitat pursuant to 87-1-209 and 50% of the money to the maintenance account established in 87-1-230, then the state special revenue appropriation for Habitat Montana is decreased by \$3,476,160.

The appropriation of state special revenue for Fishing Access Site Acquisition in this section is restricted to purchases of land that are 5 acres or less.

Section 5. Environmental cleanup appropriation. The following money is appropriated to the department of environmental quality in the indicated amount for the restricted purpose of paying Montana's share of the liability associated with the KRY site:

Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
KRY cleanup		5,850,000				5,850,000

~~**Section 6. Legislative branch information technology capital projects appropriation.** (1) There is appropriated to the legislative services division \$5,975,000 from the long range information technology program account in the capital projects fund type for the purpose of software development, consolidation, and replacement of legacy systems, which are responsible for production of the Montana Code Annotated, bills, amendments, journals of the house of representatives and the senate, and legislative minutes.~~

~~(2) Before encumbering any funds appropriated in subsection (1), the legislative services division shall submit a project plan to the legislative branch computer system planning council for approval or disapproval. The legislative branch computer system planning council shall promptly review the plan and, if necessary, make timely recommendations to the legislative services division regarding implementation of the plan.~~

~~(3) The legislative services division shall provide updates to the legislative council regarding the implementation of the capital projects funded under this section.~~

Section 7. Transfer of appropriations. The department of fish, wildlife, and parks and the department of transportation are authorized to transfer the appropriations and authority, as appropriate, in [sections 3 and 4] among the necessary fund types for these projects.

Section 8. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interentity loans in accordance

with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 9. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 and 3] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2013 biennium long-range building program presented to the 62nd legislature.

Section 10. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 11. Fund transfer. The amount of \$11,185,622 must be transferred from the long-range building program account in the capital projects fund type to the state general fund by June 30, 2011.

Section 12. Legislative consent. The appropriations authorized in [sections 1 through 11] constitute legislative consent for the capital projects contained in [sections 1 through 11] within the meaning of 18-2-102.

Section 13. Section 17-7-205, MCA, is amended to read:

“17-7-205. Long-range building program account. (1) There is a long-range building program account in the capital projects fund type.

(2) Cigarette tax revenue *is* deposited in the account pursuant to 16-11-119 ~~must be obligated prior to obligating other funds in the account.~~

(3) Coal severance taxes allocated to the account under 15-35-108 may be appropriated for the long-range building program or debt service payments on building projects. Coal severance taxes required for general obligation bond debt service may be transferred to the debt service fund.

(4) Interest earnings, project carryover funds, administrative fees, and miscellaneous revenue must be retained in the account.”

Section 14. Section 2, Chapter 3, Special Laws of May 2007, is amended to read:

“Section 2. Capital project appropriations and authorizations. The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations and authority among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
MONTANA SCHOOL FOR THE DEAF AND BLIND						
Replace Boiler	600,000					600,000
Cottage Improvement					372,000	372,000
Authority only funds consist of federal special revenue, donations, and grants.						
DEPARTMENT OF ADMINISTRATION						
Roof Repairs and Replacements, Statewide	3,000,000	392,160	68,040			3,460,200
Code/Deferred Maintenance Projects, Statewide	2,300,000					2,300,000
Hazardous Materials Abatement, Statewide	500,000					500,000
Code/Deferred Maintenance Projects, Capitol Complex					550,000	550,000
Authority only funds consist of general services division internal service funds.						
Upgrade Fire Protection Systems, Statewide	500,000					500,000
Fire Protection Measures, Capitol Complex					500,000	500,000
Authority only funds consist of general services division internal service funds.						
Upgrade State Environmental Laboratory, Helena	1,000,000		1,000,000			2,000,000
Repair/Preserve Building Envelopes, Statewide	1,500,000					1,500,000
Campus Infrastructure Projects, Statewide	1,000,000					1,000,000
Mechanical System Improvements, Capitol Complex					1,900,000	1,900,000
Authority only funds consist of general services division internal service funds.						
Deferred Maintenance, Phase 2, MT Law Enforcement Academy	500,000					500,000
New Classroom Building, MT Law Enforcement Academy	3,750,000					3,750,000
Enterprise System Services Centers	10,500,000			4,000,000		14,500,000
Other funds consist of capitol land grant funds.						
Campus Master Planning, Statewide	400,000				250,000	650,000
Authority only funds consist of general services division internal service funds.						
Challenge Grant for Super Computer, UM-MT Tech	259,000				7,000,000	7,259,000
Authority only funds may include federal special revenue, donations, grants, and higher education funds.						
DEPARTMENT OF CORRECTIONS						
Housing Unit Upgrades, MT State Prison	1,200,000					1,200,000
Expand Work Dorm, MT State Prison	2,500,000					2,500,000
Expand Food Service Capacity, MT State Prison	1,637,000 445,598				293,000	1,930,000 738,598
Authority only funds consist of proprietary funds.						

Ch. 387	MONTANA SESSION LAWS 2011		1618
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Hatchery Maintenance	500,000		500,000
Administrative Facilities Repair and Maintenance			
	800,000		800,000
DEPARTMENT OF MILITARY AFFAIRS			
Readiness Center, Miles City	2,480,000	7,510,970	9,990,970
Armed Forces Reserve Center, Missoula		30,903,968	30,903,968
Construct Female Showers and Latrines			
	290,000	290,000	580,000
Montana State Veterans' Cemetery Expansion			
		1,206,000	1,206,000
Disaster and Emergency Services Mobile Command Post			
	172,500		172,500
MONTANA UNIVERSITIES AND COLLEGES			
Code Compliance/Deferred Maintenance, MT University System			
	3,600,000		3,600,000
Systems Improvements, MT-Tech College of Technology			
	925,000		925,000
Steam Distribution System Upgrades, Phase 2, UM-Missoula			
	2,000,000	1,000,000	3,000,000
Authority only funds consist of auxiliary funds.			
Renovate Clapp Building, UM-Missoula			
	821,000		821,000
Renovate Armory Gym, MSU-Northern			
	400,000	3,250,000	3,650,000
Authority only funds consist of auxiliary funds.			
Renovate Main Hall, UM-Western			
	4,500,000		4,500,000
Renovate McMullen Hall, MSU-Billings			
	1,924,500		1,924,500
Stabilize Masonry, MSU-Bozeman	2,600,000		2,600,000
Classroom/Laboratory Upgrades, MT University System			
	2,000,000		2,000,000
Utility Infrastructure Improvements, MSU-Bozeman			
	500,000	50,000	550,000
Authority only funds consist of auxiliary funds.			
Supplement UM-Helena College of Technology Expansion			
	4,500,000	135,000	4,635,000
Authority only funds consist of auxiliary funds.			
Supplement Great Falls College of Technology Addition			
	3,000,000		3,000,000
Supplement Billings College of Technology Expansion			
	2,217,000		2,217,000
COT Long-Range Planning, UM-Missoula			
	500,000		500,000
Auto Tech Center Design, MSU-Northern			
	800,000		800,000
	190,000		190,000
Renovate Gaines Hall, MSU-Bozeman			
	28,500,000		28,500,000

1619	MONTANA SESSION LAWS 2011	Ch. 387
Law School Addition, UM-Missoula	4,200,000	5,050,000 9,250,000
Authority only funds may include federal special revenue, donations, grants, and higher education funds.		
Augment Petroleum, Bureau of Mines and Geology, UM-MT Tech	5,200,000	5,200,000
School of Journalism Building, UM-Missoula	500,000	500,000
Increase Authority, Museum of the Rockies, MSU-Bozeman		3,500,000 3,500,000
Authority only funds may include federal special revenue, donations, grants, and higher education funds.		
School of Education Building, UM-Missoula		7,500,000 7,500,000
Authority only funds may include federal special revenue, donations, grants, and higher education funds.		
New Parking Structure, UM-Missoula		5,000,000 5,000,000
Authority only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.		
Montana Agricultural Extension Services Research Centers and Farms	5,000,000	1,250,000 6,250,000
Authority is granted to Montana state university in the indicated amounts for the purpose of making capital improvements to the designated facilities.		
Authority only funds may include any type of nonstate funding.		
Animal Bioscience Facility, MSU-Bozeman	3,570,000	3,570,000
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES		
Receiv. Hospital Renovat., MT State Hospital, Warm Springs	5,800,000 1,300,000	5,800,000 1,300,000
Renovate/Improve Support Services, MT State Hospital	4,500,000	4,500,000
MT Mental Health Nursing Care Center Improvements, Lewistown	750,000	750,000
Montana Veterans' Home Improvements	1,413,000	1,413,000
Improve Campus, MT State Hospital, Warm Springs	1,280,000	1,280,000
DEPARTMENT OF TRANSPORTATION		
Equipment Storage Buildings, Statewide	2,700,000	2,700,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Code/Deferred Maintenance and Small Projects, DNRC Unit Campuses, Statewide	750,000	750,000
Co-locate DNRC/DEQ, Kalispell	3,500,000	3,500,000
Consolidate DNRC Divisions, Missoula	2,000,000	2,000,000
Building Addition, Billings Oil and Gas Office	750,000	750,000
DEPARTMENT OF JUSTICE		
Purchase Forensic Science Lab Building	7,250,000	7,250,000"

Section 15. Section 2, Chapter 478, Laws of 2009, is amended to read:

“Section 2. Capital project appropriations and authorizations. The following money is appropriated for the indicated capital projects to the department of environmental quality for state building energy conservation funds and from all other indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations and/or authority among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
MONTANA SCHOOL FOR THE DEAF AND BLIND						
Energy and Facility Improvements	250,000			25,000		275,000
Other funds consist of state building energy conservation funds.						
DEPARTMENT OF ADMINISTRATION						
Renovation and Energy Improvements State Liquor Warehouse				2,210,000		2,210,000
Other funds consist of 460,000 of state building energy conservation funds and 1,750,000 of proprietary funds.						
Mechanical and Energy Projects Capitol Complex			1,924,000		1,600,000	3,524,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.						
Authority-only funds consist of general services division internal service funds.						
Energy Related Deferred Maintenance, Statewide	1,073,568		1,276,432			2,350,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.						
Spending Authority, Utility Energy Conservation Funds					2,000,000	2,000,000
Authority-only funds consist of utility company grants, rebates and incentives.						
Hazardous Materials Abatement, Statewide	400,000					400,000
Roof Repairs and Replacements, Statewide	1,310,000		700,000			2,010,000
Elevator and ADA Modifications, Capitol Complex					1,450,000	1,450,000
Authority-only funds consist of general services division internal service funds.						
Repair/Preserve Building Envelopes, Statewide	1,500,000					1,500,000
Code/Deferred Maintenance, Statewide	1,150,000					1,150,000
Infrastructure Repairs, State Capitol	500,000				300,000	800,000 300,000
Authority-only funds consist of general services division internal service funds.						
Parking Lot Upgrades, Capitol Complex					250,000	250,000
Authority-only funds consist of general services division internal service funds.						
Upgrade Fire Protection Systems, Statewide	800,000					800,000

Campus Master Planning, Statewide

200,000	100,000		200,000	500,000
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Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

DEPARTMENT OF CORRECTIONS

Energy Conservation Improvements

1,260,000		2,610,000	10,000	500,000	4,380,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

Other funds consist of state building energy conservation funds.

Authority-only funds may include federal special revenue, donations, grants, and proprietary funds.

Alternative Energy-Biomass Boiler, MT State Prison

	250,000	740,000		990,000
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Other funds consist of state building energy conservation funds.

Emergency Power System, MT State Prison

500,000				500,000
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Renovate Low Support, MT State Prison

1,660,000				1,660,000
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New Building for Youth Transition Center, Great Falls

1,310,000				1,310,000
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60,000				60,000
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Improve Food Production

300,000				300,000
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DEPARTMENT OF FISH, WILDLIFE, AND PARKS

Hatchery Maintenance

575,000	275,000			850,000
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Administration Facilities Repair and Maintenance

	1,390,000			1,390,000
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DEPARTMENT OF MILITARY AFFAIRS

Energy Conservation Improvements

	885,000	265,000		1,150,000
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Other funds consist of state building energy conservation funds.

Storm Water Improvements/Infrastructure, Phase 3, Fort Harrison

	1,600,000			1,600,000
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Paving Parking Lots, Statewide

100,000		100,000		200,000
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MONTANA UNIVERSITIES AND COLLEGES

Code Compliance/Deferred Maintenance Montana University System

3,600,000			1,000,000	4,600,000
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Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Animal Bioscience Facility, MSU-Bozeman

2,500,000				2,500,000
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Renovate Existing Laboratory Facilities, MSU-Bozeman

	7,500,000			7,500,000
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Authority is hereby granted to Montana state university to convert existing laboratories to long-term use and to make capital improvements in the indicated amount contingent upon receipt of federal special revenue, grants, or both.

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Simulated Hospital and Child Care Center, MSU-Great Falls College of Technology

1,600,000			500,000	2,100,000
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Authority only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Funds must be used for construction costs. Any remaining funds will be redirected to construction projects at Montana colleges of technology.

UM-Helena College of Technology Project Completion

850,000				850,000
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Ch. 387	MONTANA SESSION LAWS 2011	1622
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES		
Improve Medical Services, MT Developmental Center, Boulder	450,000	450,000
DEPARTMENT OF TRANSPORTATION		
Equipment Storage Buildings, Statewide	1,175,000	1,175,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Energy/Major Repairs and Small Projects, Statewide	1,000,000	1,000,000
Building Addition, Billings Oil and Gas Office	1,300,000	1,300,000
DEPARTMENT OF AGRICULTURE		
Renovation and Energy Upgrades, State Grain Lab, Great Falls	525,000	525,000*

Section 16. Section 6, Chapter 478, Laws of 2009, is amended to read:

“Section 6. Montana stimulus capital improvements. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Exterior Envelope Improvements, Montana Law Enforcement Academy	425,000					425,000
Facility Repairs and Improvements, WATCH East	650,000					650,000
Facility Repairs and Improvements, DNRC Swan and Stillwater Units	400,000					400,000
Renovate Low Support, Phase 2, Montana State Prison	1,240,000					1,240,000
Renovate Main Hall, Phase 2, UM-Western	6,000,000					6,000,000
Renovation/Addition to Spratt Building, Montana State Hospital	1,640,000					1,640,000
Montana Veterans' Home Improvements, Statewide	1,200,000					1,200,000
Consolidate DNRC Divisions, Missoula	350,000					350,000
Office of Public Assistance, Wolf Point	2,250,000					2,250,000
	15,780					15,780
Statewide Facilities Planning	400,000					400,000
Central Land Office Building Renovation/Replacement, DNRC	1,600,000					1,600,000
Energy Conservation Improvements, Montana University System	12,300,000			4,500,000		16,800,000

The highest priority use of funds provided in this appropriation is to augment projects initiated with the state energy program funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and appropriated in [section 4] for the Montana university system to address related modernization, repairs, and renovation costs that the department of administration

considers prudent to construct within the same project. If the federal state energy program funds are exhausted, the remaining funds in this appropriation may be used to entirely fund additional energy conservation projects and related improvements.

Rose Creek Hatchery	5,000,000	5,000,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The following money is appropriated to the department of military affairs in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
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Construct Female Latrines - Department of Military Affairs, Culbertson and Malta			451,800			451,800
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

Helicopter Dip Site - Department of Military Affairs, Fort Harrison			279,268			279,268
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

Vault Modifications - Department of Military Affairs, Statewide			500,000			500,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

(3) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
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Mobley Diversion Watershed			300,000			300,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Fort Peck Hatchery Infrastructure			720,000			720,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Fort Peck Hatchery Hydroelectric Generation			9,200,000			9,200,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Willow Creek Feeder Canal Project			1,250,000			1,250,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Vandalia Fish Passage			5,000,000			5,000,000
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Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5."

Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

Note: The striking of section 6 was done by Governor's line item veto dated May 12, 2011.

CHAPTER NO. 388

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations for reclamation and development grants.

(1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to \$800,000 to be used for planning reclamation and development grant projects to be awarded by the department over the course of the 2013 biennium.

(2) The amount of \$5,883,800 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account from funds allocated for the purpose of making reclamation and development grants over the course of the 2013 biennium.

(3) The funds appropriated in subsection (2) must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grants and projects. (1) The legislature approves the grants listed in subsection (2), in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 4 and 5] are met, funds must be awarded up to the amounts approved in this section. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be offered for projects and activities farther down the priority list that would not otherwise receive funding. If at any time a grant sponsor determines a project will not begin before June 30, 2013, the sponsor shall notify the department of natural resources and conservation. After receiving notification, the department may revert the grant amount to the natural resources projects state special revenue account to make it immediately available for other projects. After all eligible projects are funded, any remaining project funds may be used for reclamation and development planning grants authorized under [section 1] or grant programs authorized by the 62nd legislature in House Bill No. 6. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 62nd legislature for the 2013 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation (Eastern District Orphaned Well Plug and Abandonment and Site Restoration)	\$300,000
(North/Eastern District Orphaned Well Plug and Abandonment and Site Restoration)	\$300,000
Ruby Valley Conservation District (Alder Gulch - Phase I Improvements)	\$300,000
Montana Department of Environmental Quality (Forest Rose Mine and Mill Site Reclamation)	\$300,000
Montana Department of Environmental Quality (Lily/Orphan Boy Mine Reclamation)	\$300,000
Sanders County (Managing Aquatic Invasive Plant Species to Protect Montana's Water Resources)	\$300,000
Montana Department of Fish, Wildlife, and Parks (Big Spring Creek PCB Remediation)	\$300,000
Montana Department of Natural Resources and Conservation (St. Mary and Milk River Basins Water Management)	\$250,000
Montana Department of Environmental Quality (Sand Coulee Public Water Supply Restoration)	\$300,000
Pondera County (Pondera County Oil & Gas Well Plug & Abandon)	\$100,000
Teton County (Teton County Oil and Gas Well Plug and Abandon)	\$60,000
Fort Peck Tribes (Reclamation of the Philip Red Eagle 2-25 Salt Water Disposal Well)	\$254,782
Montana Board of Oil and Gas Conservation (Southern District Orphaned Lease Battery Site Restoration)	\$200,000
Shelby, City of (Reclamation of Shelby Refinery)	\$300,000
Missoula County (Ninemile Creek Mining District - Phase II)	\$228,345
Montana Department of Environmental Quality (Zortman and Landusky Mines Source Control Prioritization Evaluation)	\$300,000
Missoula, City of (Missoula Sawmill Site Wood Waste Reclamation)	\$300,000
Butte-Silver Bow County (Butte Mining District: Reclamation and Protection Phase III)	\$300,000
Fergus County (Pentachlorophenol Cleanup)	\$300,000
Meagher County Conservation District (Thomas Creek Placer Surface Flow Enhancement and Stream Stabilization)	\$162,797

Montana Department of Environmental Quality (Beal Mountain Mine Pit Run On Controls and Pond Removal)	\$134,800
Crow Tribe (Little Bighorn River Restoration)	\$300,000
Richland County Conservation District (Lower Yellowstone River Bank Stabilization)	\$293,078
Montana Department of Environmental Quality (Landusky Mine Clarifier Construction)	\$300,000
Montana Department of Fish, Wildlife, and Parks (Impacts of Energy Development on Mule Deer)	\$300,000
Anaconda-Deer Lodge County (Anaconda Superfund Remediation Trails Program)	\$300,000

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2013 biennium pursuant to 17-7-302.

Section 3. Termination of previous project — appropriation. The appropriation for and authorization of the department of environmental quality Frohner mine reclamation project established in section 2, Chapter 308, Laws of 2005, are terminated. For the 2013 biennium, the amount of \$400,000 is appropriated to the department of natural resources and conservation to control invasive aquatic species in state waters.

Section 4. Coordination of fund sources for grants program projects. With the exception of planning grants, a sponsor of a grants program project who has applied for a grant for the same project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 5. Conditions of grants. Disbursement of grant funds under [sections 1 through 3] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2013 biennium.

(3) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 6. Other appropriations. For any entity that receives a grant under [sections 1 through 3], an appropriation is established upon award of the grant by the department of natural resources and conservation. Grants to entities from prior biennia are reauthorized for completion of contract work.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 8. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

Note: The striking of language in section 2 was done by Governor's line item veto dated May 12, 2011.

CHAPTER NO. 389

[HB 351]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; REQUIRING THE TRANSFER OF MONEY FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO THE STATE GENERAL FUND; RETAINING THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND FOR AN ADDITIONAL 4 YEARS; EXTENDING TRANSFERS TO THE TREASURE STATE ENDOWMENT FUND AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND TO 2020; REVISING GRANT CONDITIONS AND RANKING PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-703, 90-6-703, AND 90-6-710, MCA; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, AND SECTION 1, CHAPTER 70, LAWS OF 2001; REPEALING SECTION 2, CHAPTER 70, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce \$13,753,578 from the treasure state endowment state special revenue account to be used to finance grants authorized by this section. The department shall also use any funds appropriated to the department in [section 2].

(2) The funds appropriated in [section 2] and this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 3 and 4]. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the

manner of disbursement set forth in [section 4] until interest earnings deposited into the treasure state endowment state special revenue account during the 2013 biennium are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

Applicant/Project	Grant Amount
1. Hardin, City of (water)	\$500,000
2. Park County (bridge)	555,626
3. Sheridan, Town of (wastewater)	750,000
4. Yellowstone County (bridge)	157,227
5. Madison County (bridge)	699,931
6. Brady County Water & Sewer District (water)	750,000
7. Carter Chouteau County Water & Sewer District (water)	750,000
8. Sun Prairie Village County Water & Sewer District (water)	625,000
9. Sweet Grass County (bridge)	156,678
10. Beaverhead County (bridge)	426,941
11. Carbon County (bridge)	406,695
12. Jefferson County (bridge)	218,634
13. Hebgen Lake Estates County Water & Sewer District (wastewater)	720,000
14. Augusta Water & Sewer District (wastewater)	295,000
15. Gallatin Gateway County Water & Sewer District (wastewater)	750,000
16. Fergus County (bridge)	276,157
17. Melrose Water & Sewer District (wastewater)	162,000
18. Blaine County (bridge)	434,309
19. Deer Lodge, City of (wastewater)	500,000
20. Lincoln County (bridge)	287,827
21. West Yellowstone-Hebgen Basin Refuse Disposal District (solid waste)	246,563
22. Eureka, Town of (wastewater)	625,000
23. Fairfield, Town of (water)	500,000
24. Ravalli County (bridge)	142,616
25. Granite County (bridge)	276,408
26. Roundup, City of (water)	500,000
27. Roberts Carbon County Water & Sewer District (wastewater)	500,000
28. Lockwood Water & Sewer District (wastewater)	750,000
29. North Havre County Water District (water)	590,000
30. Sand Coulee Water District (water)	200,966
31. East Helena, City of (wastewater)	750,000
32. Bigfork Water & Sewer District (water)	750,000
33. Custer County (wastewater)	750,000
34. Crow Tribe for Crow Agency (water)	750,000
35. Hill County (bridge)	174,082
36. Polson, City of (water)	625,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds during the 2013 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2013, are insufficient to fully fund the projects numbered 1 through 30 in subsection (3) that have satisfied the conditions described in [section 4(1)] by June 30, 2013, these projects may be funded from deposits into the treasure state endowment special revenue account made during the 2015 biennium before projects authorized by the 63rd legislature receive funding from the account. However, any of the projects numbered 1 through 30 listed in subsection (3) that have not completed the conditions described in [section 4(1)] by January 1, 2013, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 31 through 36 listed in subsection (3) that have satisfied the conditions described in [section 4(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 30 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 30 listed in subsection (3), if the department determines that any of the projects numbered 1 through 30 listed in subsection (3) will be unable to meet the startup condition described in [section 4(1)(b)], or if a project submits a written withdrawal to the department indicating it no longer requires a grant, those funds may be made available to projects numbered 31 through 36 listed in subsection (3) that have completed the conditions described in [section 4(1)].

(7) In the event that any remaining funds deposited into the treasure state endowment state special revenue account during the 2013 biennium are insufficient to fully fund any one of the grant recipients listed in subsection (3), the department may make the remaining funds available to the first grant recipient that has satisfied the conditions described in [section 4(1)] and that is able to firmly commit the balance of the amount necessary to fund the project in its entirety.

(8) Grant recipients shall complete all of the conditions described in [section 4(1)] by December 31, 2014, or the grant contract will be terminated.

Section 2. Contingent appropriation from treasure state endowment state special revenue account. (1) On or before July 15, 2011, the department of commerce shall determine how much of the loan of \$6,512,000 authorized by subsection (6) of section 1, Chapter 458, Laws of 2009, was borrowed from the board of investments, how many projects satisfied the conditions described in subsection (1) of section 3, Chapter 458, Laws of 2009, the amount of the loan that will not be encumbered based on the inability of projects to satisfy the conditions, and the difference between the \$6,512,000 loan and the amount of the loan that will not be encumbered. The department shall report these findings to the board of investments, the legislative fiscal division, and the office of budget and program planning on or before July 19, 2011.

(2) The board of investments shall use the difference between the \$6,512,000 loan authorization and the amount of the loan authorization that will not be encumbered to determine the maximum level of debt service that may be

required by the treasure state endowment program for fiscal years 2012 and 2013. For the purpose of this analysis, the board of investments shall assume that the amount reported by the department was an obligation of the treasure state endowment program on July 1, 2011, and the cost of the loan will be an obligation to the program. On or before August 1, 2011, the board of investments shall certify the resulting maximum level of debt service for fiscal years 2012 and 2013 to the department, the legislative fiscal division, and the office of budget and program planning.

(3) Subject to an appropriation limit, as provided in this subsection, if the maximum level of debt service for fiscal years 2012 and 2013 is less than \$840,000, then the difference between \$840,000 and the maximum level of debt service is appropriated from the treasure state endowment state special revenue account to the department of commerce to finance the grants authorized in [section 1]. The appropriation provided for in this subsection may not exceed \$840,000.

(4) If funds are appropriated in this section, they must be used to increase the appropriation in [section 1(1)] for the purpose set forth in [section 1].

Section 3. Approval of grants — completion of biennial appropriation. (1) The legislature, pursuant to 90-6-701 and 90-6-703, authorizes grants for the projects identified in [section 1(3)], the emergency infrastructure projects in [section 6], and for infrastructure planning in [section 7].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account provided for in 17-5-703(3)(c).

Section 4. Conditions of grants — disbursement of funds. (1) The disbursement of grant funds under [sections 1 through 4] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(c) The grant recipient must have a project management plan that is approved by the department.

(d) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(e) The grant recipient shall satisfactorily comply with any conditions described in the grant recipient's application for treasure state endowment assistance and any written conditions that were imposed on the application by the department during the application ranking process.

(f) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities

or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the treasure state endowment program project administration manual, adopted by the department of commerce through the administrative rulemaking process.

Section 5. Other powers and duties of department. (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources; or

(b) authorize the use of the remaining authorized grant amounts for the construction of additional infrastructure components directly related to the approved project that will further enhance the overall system.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in program guidelines for receiving the larger treasure state endowment program grant.

Section 6. Appropriations from treasure state endowment state special revenue account for emergency grants. There is appropriated to the department of commerce \$100,000 for the biennium beginning July 1, 2011, from the treasure state endowment special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 7. Appropriations from treasure state endowment state special revenue account for infrastructure planning grants. There is appropriated to the department of commerce \$900,000 for the biennium beginning July 1, 2011, from the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with preliminary infrastructure planning grants for infrastructure projects as defined in 90-6-701.

Section 8. Appropriation from treasure state endowment regional water system special revenue account. (1) There is appropriated \$3.92 million to the department of natural resources and conservation from the interest earnings of the treasure state endowment regional water system special revenue account and other funds to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 10(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the 2013 biennium under 17-7-302.

Section 9. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 8(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(3)(d).

Section 10. Conditions — manner of disbursement of funds. (1) The disbursement of funds under [sections 8 and 9] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 11. Fund transfers. (1) The state treasurer shall transfer \$1.57 million from the treasure state endowment special revenue account to the state general fund.

(2) The state treasurer shall transfer \$1 million from the treasure state endowment regional water system special revenue account to the state general fund.

(3) The transfers in subsections (1) and (2) must occur prior to July 1, 2013.

(4) The state treasurer is authorized to transfer interest earnings from the treasure state endowment fund to the treasure state endowment special revenue account for the purpose of completing the fund transfer in subsection (1).

(5) The state treasurer is authorized to transfer interest earnings from the treasure state endowment regional water system fund to the treasure state endowment regional water special revenue account for the purpose of completing the fund transfer in subsection (2).

Section 12. Section 17-5-703, MCA, is amended to read:

“17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable

from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) and (4).

(3) (a) Until June 30, ~~2016~~ 2020, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) Until June 30, ~~2016~~ 2020, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(4) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, ~~2016~~ 2020—see, 1, Ch. 70, L. 2001.)

17-5-703. (Effective July 1, 2016 2020) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) and (4).

(3) (a) Until June 30, 2016 2020, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(4) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.”

Section 13. Section 90-6-703, MCA, is amended to read:

“90-6-703. Types of financial assistance available. (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) matching grants for ~~preliminary engineering studies~~ *infrastructure planning*; and

(c) emergency grants for local infrastructure projects.

(2) The department of commerce may provide local governments with emergency grants for infrastructure projects only if necessary to remedy conditions that, if allowed to continue until legislative approval could be obtained, will endanger the public health or safety and expose the applicant to substantial financial risk. The department shall report to the governor and the legislative finance committee regarding emergency grants that are awarded during each biennium.

(3) The department of commerce may provide local governments with matching grants for ~~preliminary engineering studies~~ *for infrastructure projects*

planning. The department shall report to the governor and the legislature regarding ~~preliminary engineering infrastructure planning~~ grants that are awarded during each biennium.”

Section 14. Section 90-6-710, MCA, is amended to read:

“90-6-710. Priorities for projects — procedure — rulemaking. (1) The department of commerce must receive proposals for infrastructure projects from local governments *on a continual basis*. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. For the projects under 90-6-703(1)(a), the department shall prepare and submit ~~a list~~ *two lists* containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2) *and this subsection*. *One list must contain the ranked and recommended bridge projects, and the other list must contain the remaining ranked and recommended infrastructure projects referred to in 90-6-701(3)(a). Each list must be prioritized pursuant to subsection (2) of this section, but the department may recommend up to 20% of the interest earnings anticipated to be deposited into the treasure state endowment fund established in 17-5-703 during the following biennium for bridge projects. Before making recommendations to the governor, the department may adjust the ranking of projects by giving priority to urgent and serious public health or safety problems.* The governor shall review the projects recommended by the department and shall submit ~~a list~~ *the lists* of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program.

(5) The department shall report to each regular session of the legislature the status of all projects that have not been completed in order for the legislature to

review each project's status and determine whether the authorized grant should be withdrawn."

Section 15. Section 6, Chapter 495, Laws of 1999, is amended to read:

"Section 6. Termination. [This act] terminates June 30, ~~2013~~ 2020."

Section 16. Section 1, Chapter 70, Laws of 2001, is amended to read:

"Section 1. Section 6, Chapter 495, Laws of 1999, is amended to read:

"Section 6. Termination. [~~This act~~] [*This act*] ~~terminates~~ *terminates* June 30, ~~2013~~ ~~2016~~ 2020."

Section 17. Repealer. Section 2, Chapter 70, Laws of 2001, is repealed.

Section 18. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 19. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

Note: The striking of language in section 1 was done by Governor's line item veto dated May 12, 2011.

CHAPTER NO. 390

[HB 363]

AN ACT ESTABLISHING THE USE OF FEES COLLECTED FROM THE SALE OF WOLF HUNTING LICENSES; ESTABLISHING THE WOLF MANAGEMENT ACCOUNT; AUTHORIZING THE TRANSFER OF FUNDS; AMENDING SECTIONS 87-1-601, 87-2-523, 87-2-524, AND 87-5-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 87-1-601, MCA, is amended to read:

"87-1-601. (Temporary) Use of fish and game money. (1) (a) Except as provided in [section 5] and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1)

must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons

engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs.

87-1-601. (Effective March 1, 2011) Use of fish and game money. (1) (a) Except as provided in 87-1-290, [section 5], and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If

the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 2. Section 87-2-523, MCA, is amended to read:

"87-2-523. Class E-1—resident wolf license. (1) Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of \$19, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) *Fees collected pursuant to this section must be deposited and used in accordance with [section 5].*"

Section 3. Section 87-2-524, MCA, is amended to read:

"87-2-524. Class E-2—nonresident wolf license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of \$350, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) *Fees collected pursuant to this section must be deposited and used in accordance with [section 5].*"

Section 4. Section 87-5-132, MCA, is amended to read:

“87-5-132. Use of radio-tracking collars for monitoring wolf packs.

(1) As part of a wolf management plan approved by the department, a radio-tracking collar must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department ~~shall~~ *may* expend ~~only the~~ *any* federal funds *received* for wolf management purposes *and the portion of money allocated from the wolf management account established in [section 5]* to fulfill the requirements of this section.

(3) The department ~~may~~ *shall* collaborate ~~and~~ *and* cooperate *and may enter into agreements* with other state and federal agencies, *including the United States department of agriculture wildlife services*, to fulfill the requirements of this section.”

Section 5. Wolf management account. (1) There is a wolf management account in the state special revenue fund established in 17-2-102. Fees collected from the sale of Class E-1 and Class E-2 wolf licenses and interest earned on the account must be deposited into the account. Subject to appropriation by the legislature, money deposited in the account must be used exclusively for the management of wolves as specified in subsection (2).

(2) Money deposited in accordance with subsection (1) must be equally divided and allocated for the following purposes:

(a) wolf-collaring activities conducted pursuant to 87-5-132; and

(b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

Section 6. Transfer of funds. On [the effective date of this act], the department of fish, wildlife, and parks shall transfer from the general license account to the wolf management account established in [section 5] any revenue collected from the sale of Class E-1 and Class E-2 wolf licenses prior to [the effective date of this act].

Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 5].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 391

[HB 372]

AN ACT ESTABLISHING A PREFERENCE POINT SYSTEM FOR DISTRIBUTING CERTAIN NONRESIDENT HUNTING LICENSES; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 87-1-301, MCA, is amended to read:

“87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), “landowner tolerance” means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner’s property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana’s youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) *The Subject to the provisions of [section 2], the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:*

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 2. Nonresident elk and deer license preference point system. (1) The department shall establish a preference point system to distribute Class B-10 nonresident big game combination licenses and Class B-11 nonresident deer combination licenses.

(2) In addition to payment of any fees established in 87-2-113, 87-2-505, and 87-2-510, nonresidents applying to purchase a Class B-10 or Class B-11 license may purchase a preference point, upon payment of a nonrefundable \$50 fee, that gives an applicant who has more preference points priority to receive a Class B-10 or Class B-11 license over an applicant who has purchased fewer preference points.

(3) An applicant may:

(a) purchase only one preference point per license year; and

(b) purchase a preference point without applying for a Class B-10 or Class B-11 license. An applicant not applying for a Class B-10 or Class B-11 license may purchase a preference point only between July 1 and September 30 prior to the applicable license year. The department shall delete an applicant's accumulated preference points if the applicant does not apply for a Class B-10 or Class B-11 license for 2 consecutive years.

(4) Except as provided in subsection (3)(b), the department may not delete an applicant's accumulated preference points unless the applicant obtains the

license applied for, in which case the department shall delete the applicant's accumulated preference points.

(5) The department shall issue 75% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants in the order of which applicants have purchased the greatest number of preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (6).

(6) The department shall issue 25% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants who have not purchased any preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have not purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (5).

(7) Up to five applicants may apply as a party under this section. The department shall use an average of the number of preference points accumulated by those applicants to determine their priority in receiving licenses issued pursuant to subsection (5). The department shall consider any fraction that results from the calculation of an average when determining that priority.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 392

[HB 377]

AN ACT ALLOWING THE USE OF MEDICATION AIDES IN LONG-TERM CARE FACILITIES; ESTABLISHING QUALIFICATIONS AND SCOPE OF PRACTICE FOR CERTAIN MEDICATION AIDES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-8-102 AND 37-8-422, MCA.

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

Section 1. Section 37-8-102, MCA, is amended to read:

“37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advanced practice registered nurse” means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) “Board” means the board of nursing provided for in 2-15-1734.

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

(4) “Medication aide *I*” means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, ~~an advanced practice registered nurse with~~

~~prescriptive authority, a dentist, an osteopath, or a podiatrist naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist~~ authorized by state law to prescribe drugs.

(5) "*Medication aide II*" means a person who in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe drugs.

~~(5)~~(6) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

~~(6)~~(7) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

~~(7)~~(8) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

~~(8)~~(9) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrists, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(8)~~ (9):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) “nursing intervention” is the implementation of a plan of nursing care necessary to accomplish defined goals.”

Section 2. Section 37-8-422, MCA, is amended to read:

“37-8-422. Medication aide I — scope of practice. A medication aide *I* may:

(1) perform services requiring basic knowledge of medications and medication administration under specific circumstances as determined by the board by administrative rule;

(2) practice only in a licensed assisted living facility, as defined in 50-5-101; and

(3) practice only under the general supervision of a licensed professional or practical nurse.”

Section 3. Medication aide II — qualifications. An applicant for a license to practice as a medication aide II shall submit to the board written evidence that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of public instruction;

(2) holds a valid certificate from the department of public health and human services as a certified nursing assistant;

(3) has been employed as a certified nursing assistant in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, for a minimum of 2 years;

(4) holds a valid certificate in cardiopulmonary resuscitation;

(5) (a) has successfully completed a training program specified by the board that includes 100 hours of education consisting of classroom instruction, laboratory skills, and supervised medication administration related to basic pharmacology and principles of safe medication administration; or

(b) is currently licensed as a medication aide in another state with a program that is determined by the board to be reasonably equivalent to the board-specified program;

(6) has passed a board-approved competency examination with at least 80% proficiency; and

(7) has completed 12 hours of annual continuing education in pharmacology and medication administration.

Section 4. Medication aide II — scope of practice. (1) A licensed medication aide II may:

(a) perform services requiring basic knowledge of medications and medication administration subject to the limitations outlined in subsection (2);

(b) practice only in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101; and

(c) practice only under the supervision of a licensed professional or practical nurse who is on the premises.

(2) A licensed medication aide II may not:

(a) administer medications on an as-needed basis;

(b) administer parenteral or subcutaneous medications except for pre-labeled, predrawn insulin;

(c) administer medications through nasogastric routes or by gastrostomy or jejunostomy tubes;

- (d) convert or calculate dosages; or
- (e) take verbal orders related to changes in medications and dosages.

Section 5. Medication aide — title. Any person who holds a valid license to practice as a medication aide in this state may use the title licensed medication aide I or licensed medication aide II and the abbreviations “LMA I” or “LMA II” respectively.

Section 6. Medication aide II — implementation. The board shall establish rules implementing the provisions of [this act] and providing for the establishment of requirements for license renewal, including but not limited to continuing education, continued certification as a certified nursing assistant and medication aide II, and mandatory cardiopulmonary resuscitation certification.

Section 7. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [sections 3 through 5].

Approved May 12, 2011

CHAPTER NO. 393

[HB 495]

AN ACT REVISING STATUTORY APPROPRIATIONS; REDUCING STATUTORY APPROPRIATION DISTRIBUTIONS; CLARIFYING THE PROVISIONS OF THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT PROGRAM; ELIMINATING THE LOCAL GOVERNMENT ENTITLEMENT SHARE ANNUAL GROWTH FACTOR FOR FISCAL YEARS 2012 AND 2013; REVISING THE ENTITLEMENT SHARE GROWTH RATE; REDUCING THE LOCAL GOVERNMENT ENTITLEMENT SHARE FOR TAX INCREMENT FINANCING DISTRICTS; ELIMINATING THE THREE-FIFTHS VOTE REQUIREMENT FOR REVISION OF THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENTS; PROHIBITING AN INCREASE IN THE NUMBER OF MILLS A LOCAL GOVERNMENT MAY LEVY FOR A REIMBURSED TAX BASE DECREASE; AMENDING SECTIONS 15-1-121 AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

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

“15-1-121. Entitlement share payment — purpose — appropriation.

(1) *As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government’s share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments. 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:

(2) *The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:*

(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)(3)~~ The total amount estimated pursuant to subsections (1) and (2)(a) received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base year component. The sum of all local governments' base year components is the base fiscal 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)(4)~~ (a) ~~The~~ With the exception of fiscal years 2012 and 2013, the base year entitlement share pool must be increased annually by a *an entitlement share* growth rate as provided for in this subsection ~~(3)~~ (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year, *with the exception of fiscal years 2012 and 2013*.

(b) By October 1 of each ~~even-numbered~~ year, the department shall calculate the growth rate of the entitlement share pool for ~~each~~ *the current* 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

Ch. 393	MONTANA SESSION LAWS 2011	1650
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)(i) 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%. entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in subsection (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporation income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.~~

~~(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:~~

~~(A) the sum of the first factor plus the second factor; or~~

~~(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.~~

~~(iii) In no instance can the entitlement growth factor be less than 1. The entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.~~

~~(4)(5) 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) (8). 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) for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.~~

~~(5)(6) (a) The entitlement share pools calculated in this section and the block grants funding provided for in subsection (6) (8) 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 prior fiscal* 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 prior fiscal* 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 prior fiscal* 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~~ before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) *If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).*

~~(6)(8)~~ (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 funding~~. If a tax increment financing district referred to in subsection ~~(6)(b)~~ (8)(b) terminates, then the ~~block grant funding for the district~~ provided for in subsection ~~(6)(b)~~ (8)(b) terminates.

(b) One-half of the payments provided for in this subsection ~~(6)(b)~~ (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection ~~(6)(a)~~ (8)(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 2,833
Deer Lodge	TIF District 2	3,126 2,813
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153 4,638
Flathead	Kalispell - District 3	41,368 37,231
Flathead	Whitefish District	164,660 148,194
Gallatin	Bozeman - downtown	34,620 31,158
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507 225,251
Missoula	Missoula - 4-1C	33,343 30,009
Silver Bow	Butte - uptown	283,801 255,421
Yellowstone	Billings	436,815

~~(7)(9)~~ The estimated base fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from *tax increment financing districts, 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)(e) 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 2. 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)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the

completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) 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) a mill levy imposed for a newly created regional resource authority.

(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:

(a) may increase the number of mills to account for a decrease in reimbursements; *and*

(b) *may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).*

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, 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 tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a 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;

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

(v) a levy for the support of a newly established regional resource authority;

or

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703.

(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 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2011.

Section 5. Applicability. [This act] applies to fiscal years beginning after June 30, 2011.

Approved May 12, 2011

CHAPTER NO. 394

[HB 613]

AN ACT GENERALLY REVISING ELEMENTS OF THE BUDGETING PROCESS TO IMPLEMENT PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; DEFINING THE BASE BUDGET FOR THE HUMAN AND COMMUNITY SERVICES DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT EMPLOYEES OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND ARE EXEMPT FROM VACANCY SAVINGS; REVISING REPORTING REQUIREMENTS FOR THE OFFICE OF STATE PUBLIC DEFENDER TO THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING BENCHMARKS FOR CATEGORIZING PETROLEUM STORAGE TANK RELEASE SITES AS RESOLVED AND THE ELIMINATION OF THE BASE BUDGET WHEN BENCHMARKS ARE NOT MET; ESTABLISHING REPORTING REQUIREMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL REGARDING THE CLOSURE OF PETROLEUM STORAGE TANK RELEASE SITES AS IT RELATES TO THE BASE BUDGET AND THE BENCHMARKS; AMENDING SECTIONS 17-7-102 AND 47-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 17-7-102, MCA, is amended to read:

“17-7-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) “Additional services” means different services or more of the same services.

(2) “Agency” means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) “Approving authority” means:

(a) the governor or the governor’s designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice’s designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) “Base budget” means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue

funds may not exceed that level of funding authorized by the previous legislature. For the biennium beginning July 1, 2011, the term includes items specified in section 85, Chapter 489, Laws of 2009.

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) (a) "Present law base" means, subject to subsection (10)(b), that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(i) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(ii) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(iii) inflationary or deflationary adjustments;

(iv) elimination of nonrecurring appropriations; and

(v) items specified in section 85, Chapter 489, Laws of 2009.

(b) For the budget for the 2011 legislative session, present law base must be adjusted by reducing general fund budgets by the equivalent of that portion of the 2% across-the-board reduction assessed by the 61st legislature on selected agencies that was allocated by those agencies to personal services in the 2011 biennium. The director of the governor's office of budget and program planning and the legislative fiscal analyst shall agree on a mechanism for determining how agencies have allocated this reduction.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and

conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2011—sec. 35(1), Ch. 486, L. 2009; sec. 82, Ch. 489, L. 2009.)

17-7-102. (Effective July 1, 2011) Definitions. As used in this chapter, the following definitions apply:

(1) “Additional services” means different services or more of the same services.

(2) “Agency” means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) “Approving authority” means:

(a) the governor or the governor’s designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice’s designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) “Base budget” means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature. *For the biennium beginning July 1, 2013, the base budget for the human and community services division in the department of public health and human services may also include the state general fund equivalent to expenditures in fiscal year 2012 of one-time-only TANF federal special revenue funding appropriated during the 2013 biennium to the division for the purpose of child care.*

(b) The term does not include:

(i) funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met;

(ii) *funding for petroleum storage tank leak prevention if the accountability benchmarks in [section 4] are not met.*

(5) “Budget amendment” means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) “Emergency” means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency’s appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency’s expenditure requirements for the performance of the function or functions.

(7) “Funds subject to appropriation” means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) “Necessary” means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) “New proposals” means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) “Present law base” means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) “Program” means a principal organizational or budgetary unit within an agency.

(12) “Requesting agency” means the agency of state government that has requested a specific budget amendment.

(13) “University system unit” means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020—sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, 2020) Definitions. As used in this chapter, the following definitions apply:

(1) “Additional services” means different services or more of the same services.

(2) “Agency” means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) “Approving authority” means:

(a) the governor or the governor’s designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice’s designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 2. Section 47-1-201, MCA, is amended to read:

“47-1-201. Office of state public defender — personnel — compensation — expenses — reports. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in 47-1-210;

(v) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

(9) (a) The office of public defender is required to report data for each fiscal year by *September 30 of the subsequent fiscal year* representing the caseload for the entire public defender system to the legislative finance committee. The report must include *unduplicated count* data for ~~both employee and contract attorneys~~ all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening

and closure for each case type. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year *by September 30 of the subsequent fiscal year* on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~

Section 3. Montana school for the deaf and blind exempt from vacancy savings. (1) Vacancy savings may not be imposed on authorized positions in the Montana school for the deaf and blind, as described in 20-8-101.

(2) Each fiscal year, the board shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized positions in the Montana school for the deaf and blind. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire; and

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant.

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

(a) "Authorized positions" means those positions included in the list of current authorized positions that the board is required to maintain under 2-18-206.

(b) "Board" means the board of public education created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(c) "Vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

Section 4. Benchmarks — budget action taken if not met. (1) Categorizing petroleum storage tank release sites as resolved is a higher priority than investigation of new releases unless the new release is an imminent danger to the health and safety of the public.

(2) The department shall develop a list of open release sites prioritized by danger to the health and safety of the public and anticipated date of categorizing the sites as resolved.

(3) (a) The cumulative benchmarks that are provided in subsection (3)(b) must be met. If the benchmarks are not met, money appropriated for petroleum storage tank leak prevention may not be included in the department's base budget, as defined in 17-7-102, for the current biennium.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Resolved Sites
December 31, 2011	45
July 1, 2012	90
December 31, 2012	135
July 1, 2013	180

December 31, 2013	225
July 1, 2014	270
December 31, 2014	315
July 1, 2015	360

(4) The department shall report to the environmental quality council established by 5-16-101 at the next regularly scheduled meeting of the council following the passing of each benchmark date in subsection (3)(b).

(5) As used in this section, the following definitions apply:

(a) "Petroleum storage tank" has the same meaning as prescribed in 75-11-302.

(b) "Release" has the same meaning as prescribed in 75-11-302.

(c) "Resolved" means a determination by the department that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment.

Section 5. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Coordination instruction. If House Bill No. 2 is not passed and approved, then [this act] is void.

Section 8. Effective date. [This act] is effective July 1, 2011.

Section 9. Termination. [Section 1(4)(a)] terminates June 30, 2013.

Approved May 12, 2011

CHAPTER NO. 395

[HB 619]

AN ACT REVISING FISH, WILDLIFE, AND PARKS FOREST MANAGEMENT LAWS BY REQUIRING THE CALCULATION OF AN ANNUAL SUSTAINABLE YIELD; ESTABLISHING A FOREST MANAGEMENT PLAN AND A SUSTAINABLE YIELD STUDY; ESTABLISHING THAT COSTS TO IMPLEMENT THE FOREST MANAGEMENT PLAN ARE AN AUTHORIZED EXPENDITURE; AMENDING SECTIONS 87-1-201 AND 87-1-621, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Forest management plan — sustainable yield study required — definition. (1) The commission shall adopt a forest management plan, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested

department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission shall review and redetermine the annual sustainable yield at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5.

Section 2. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) *in accordance with the forest management plan required by [section 1]*, address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 3. Section 87-1-621, MCA, is amended to read:

"87-1-621. (Temporary) Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to

87-1-201(9)(a)(iv) [section 1] and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account are statutorily appropriated, as provided in 17-7-502, to the department and must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-201(9)(a)(iv) [section 1]. (Terminates June 30, 2013—sec. 8, Ch. 330, L. 2009.)

87-1-621. (Effective July 1, 2013) Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to 87-1-201(9)(a)(iv) [section 1] and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-201(9)(a)(iv) [section 1].”

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 1].

Section 5. Coordination instruction. If House Bill No. 2 is not passed and approved in a form that provides funding to the department of fish, wildlife, and parks to calculate an annual sustainable yield for department-owned lands, then [this act] is void.

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 396

[SB 233]

AN ACT REVISING ENVIRONMENTAL IMPACT LAWS; REVISING STATUTES RELATED TO AN ENVIRONMENTAL IMPACT ANALYSIS AND AN ENVIRONMENTAL ASSESSMENT; PROVIDING DEFINITIONS; CLARIFYING THAT ALTERNATIVES INCLUDED IN AN ALTERNATIVES ANALYSIS ARE DISCRETIONARY; PROVIDING THAT THE SCOPE OF AN ENVIRONMENTAL REVIEW IS ONLY WITHIN MONTANA’S BORDERS; PROVIDING THE REMEDY FOR FAILURE BY AN AGENCY TO COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; REVISING THE ENVIRONMENTAL REVIEW FEE ASSESSMENT; AMENDING SECTIONS 75-1-102, 75-1-201, 75-1-203, 75-1-208, AND 75-1-220, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

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

Section 1. Section 75-1-102, MCA, is amended to read:

“75-1-102. Intent — purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature’s

intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

(a) environmental attributes are fully considered *by the legislature in enacting laws to fulfill constitutional obligations; and*

(b) *the public is informed of the anticipated impacts in Montana of potential state actions.*

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent, *mitigate*, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) (a) *The purpose of requiring an environmental assessment and an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies.*

(b) *Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant to 75-1-201(6)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory authority, beyond authority explicitly provided for in existing statute, to a state agency."*

Section 2. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements.

(1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking *for a state-sponsored project* that may have an impact on the *Montana* human environment *by projects in Montana*; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III)~~ *and (1)(b)(iv)(C)(II)* and, if requested by the project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ *(1)(b)(iv)(C)(III)*;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking *for state-sponsored projects*, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment *in Montana* are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment *in Montana* a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects *on Montana's environment* that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)(III)~~ the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the *Montana* human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; *If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a*

recommended course of action, but the project sponsor may agree pursuant to subsection (6)(b) to a specific course of action.

(vi) recognize the ~~national~~ and *potential* long-range character of environmental ~~problems~~ *impacts in Montana* and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality of ~~the world~~ *Montana's* environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of ~~the~~ *Montana's* environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the *legislature and the* environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved *in Montana* and with any *Montana* local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency *in Montana* with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) *Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.*

(b) *An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if it is conducted by:*

(i) *the department of fish, wildlife, and parks for the management of wildlife and fish;*

(ii) *an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or*

(iii) *by a state agency and a federal agency to the extent the review is required by the federal agency.*

~~(2)~~(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3)~~(4) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the

decision. Except as provided in subsection ~~(3)(b)~~ (4)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. ~~A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.~~ A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its ~~findings of fact and administrative decision~~ *environmental review document* before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. ~~The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.~~

~~(4)(5)~~ To the extent that the requirements of ~~subsections subsection (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III)~~ are inconsistent with federal requirements, the requirements of ~~subsections subsection (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

~~(5)(6)~~ (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ (6) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)(7)~~ (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (7)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (7)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(d) *The remedy in any action brought for failure to comply with or for inadequate compliance with a requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the environmental review conducted pursuant to subsection (1).*

(e) *A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined, voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may be remanded by a court.*

~~(7)~~(8) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

~~(8)~~(9) A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.”

Section 3. Section 75-1-203, MCA, is amended to read:

“75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule that may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of ~~\$2,500~~ \$2,501 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to \$1 million, plus 1% of any estimated cost over \$1 million and up to \$20 million, plus 1/2 of 1% of any estimated cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million and up to \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

(5) In calculating fees under this section, the agency may not include in the estimated project cost the project sponsor’s property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data needed for the environmental impact statement.”

Section 4. Section 75-1-208, MCA, is amended to read:

“75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under ~~75-1-201(1)(b)(iv)(C)(III) or (8) 75-1-201(9)~~ or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at

its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, ~~consider~~ *evaluate* the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures."

Section 5. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) *"Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.*

(1)(2) "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)(3) "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)(4) "Cumulative impacts" means the collective impacts on the human environment *within the borders of Montana* 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)(5) "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 *within the borders of Montana* as required under this part.

(5)(6) "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 329).

(6)(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies.”

Section 6. Coordination instruction. If [this act] is passed and approved and Senate Bill No. 317 is not passed and approved or if both [this act] and Senate Bill No. 317 are passed and approved, then Senate Bill No. 317 is void, the amendments to 75-1-201 contained in [section 2 of this act] are void, and 75-1-201 must be amended as follows:

“75-1-201. General directions — environmental impact statements.

(1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking *for a state-sponsored project* that may have an impact on the *Montana* human environment *by projects in Montana*; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III)~~ *and (1)(b)(iv)(C)(II)* and, if requested by the project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ *(1)(b)(iv)(C)(III)*;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking *for state-sponsored projects*, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment *in Montana* are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment *in Montana* a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse ~~environmental~~ effects *on Montana’s environment* that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor’s comments regarding the proposed alternative;

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)(III)~~ the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the *Montana* human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; *If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.*

(vi) recognize the ~~national~~ and *potential* long-range character of environmental ~~problems~~ *impacts in Montana* and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality of ~~the world~~ *Montana's* environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of ~~the~~ *Montana's* environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the *legislature and the* environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise

with respect to any environmental impact involved *in Montana* and with any *Montana* local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency *in Montana* with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) *Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.*

(b) *An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if it is conducted by:*

(i) *the department of fish, wildlife, and parks for the management of wildlife and fish;*

(ii) *an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or*

(iii) *a state agency and a federal agency to the extent the review is required by the federal agency.*

(2)(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) ~~In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.~~

(b) ~~When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court~~

considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

~~(4)~~ To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections ~~(1)(b)(iv)(C)(I)~~ and ~~(1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

~~(5)~~(4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)~~(5) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (5)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (5)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(6) (a) (i) *In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection (6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.*

(ii) *Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the*

agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) The remedy in any action brought for failure to comply with or for inadequate compliance with a requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the environmental review conducted pursuant to subsection (1).

(d) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined, voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may be remanded by a court.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(7)(8) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8)(9) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.”

Section 7. Coordination instruction. If [this act] is passed and approved and Senate Bill No. 317 is not passed and approved or if both [this act] and Senate Bill No. 317 are passed and approved, then Senate Bill No. 317 is void, the amendments to 75-1-201 contained in [section 2 of this act] are void, and 75-1-201 must be amended as follows:

“75-1-201. General directions — environmental impact statements.

- (1) The legislature authorizes and directs that, to the fullest extent possible:
- (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;
 - (b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, shall:
 - (i) use a systematic, interdisciplinary approach that will ensure:
 - (A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking *for a state-sponsored project* that may have an impact on the *Montana* human environment *by projects in Montana*; and
 - (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III) and (1)(b)(iv)(C)(II)~~ and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV) ~~(1)(b)(iv)(C)(III)~~;
 - (ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking *for state-sponsored projects*, along with economic and technical considerations;
 - (iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment *in Montana* are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);
 - (iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment *in Montana* a detailed statement on:
 - (A) the environmental impact of the proposed action;
 - (B) any adverse ~~environmental~~ effects *on Montana’s environment* that cannot be avoided if the proposal is implemented;
 - (C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:
 - (I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)~~(III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the *Montana* human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; *If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.*

(vi) recognize the ~~national and~~ *potential* long-range character of environmental ~~problems impacts in Montana~~ and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality of ~~the world~~ *Montana's* environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of ~~the Montana's~~ environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the *legislature and the* environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved *in Montana* and with any *Montana* local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency *in Montana* with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) *Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.*

(b) *An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if it is conducted by:*

(i) *the department of fish, wildlife, and parks for the management of wildlife and fish;*

(ii) *an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or*

(iii) *a state agency and a federal agency to the extent the review is required by the federal agency.*

(2)(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) ~~In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.~~

~~(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are~~

presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

~~(4)~~ To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections ~~(1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

~~(5)(4)~~ (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)(5)~~ (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (5)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (5)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection

(6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive.

(ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, or other equitable relief, that the:

(A) party requesting the relief will suffer irreparable harm in the absence of the relief;

(B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:

(I) may not consider the legal nature or character of any party; and

(II) shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

(C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(7)(8) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8)(9) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) The amendments to 75-1-201 contained in [section 7] are effective on the date that the contingency provided for in [section 11] occurs.

Section 10. Applicability. [This act] applies to an environmental assessment and an environmental impact statement begun on or after [the effective date of this act].

Section 11. Termination — contingency. If either subsection (6)(c) or (6)(d) of 75-1-201, as included in [section 6], is invalidated or found to be unconstitutional by the Montana supreme court, then the amendments to 75-1-201 contained in [section 6] terminate on the date of the invalidation or the finding of unconstitutionality.

Approved May 12, 2011

CHAPTER NO. 397

[SB 241]

AN ACT REVISING THE FORMULA FOR DETERMINING MEDICAID REIMBURSEMENT RATES FOR PHYSICIANS; REVISING DEFINITIONS; AMENDING SECTIONS 53-6-124 AND 53-6-125, MCA; REPEALING SECTION 53-6-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 53-6-124, MCA, is amended to read:

“53-6-124. Definitions. As used in ~~53-6-124 through 53-6-125~~, 53-6-127, and this section, the following definitions apply:

(1) “Conversion factor” means ~~the average of the conversion factors used by the top five insurers or third party administrators providing disability insurance to the most beneficiaries within the state in January 2007 who use the resource-based relative value scale to determine fees for covered services. This January 2007 conversion factor is applicable for state fiscal years 2008, 2009, 2010, 2011, 2012, and 2013. In state fiscal year 2014 and for each state fiscal year thereafter, the conversion factor is the average of the conversion factors used by the top five insurers or third party administrators providing disability insurance to the most beneficiaries within the state who use the resource-based relative value scale to determine fees for covered services~~ *dollar value that is multiplied by the appropriate relative value unit to calculate a price for a service provided by a physician.*

(2) “Department” means the department of public health and human services.

(3) “Medicaid” means the Montana medical assistance program established under Title 53, chapter 6.

(4) “Physician” has the meaning provided in 37-3-102.

(5) “Policy adjuster” means a factor by which the fee determined under 53-6-125 is multiplied to increase the fee paid by medicaid for certain categories of services.

(6) “Relative value unit” means a numerical value assigned in the resource-based relative value scale to each procedure code used to bill for services provided by a physician.

(7) “Resource-based relative value scale” means the medicare resource-based relative value scale contained in the physician’s medicare fee schedule adopted by the centers for medicare and medicaid services of the U.S. department of health and human services.”

Section 2. Section 53-6-125, MCA, is amended to read:

“53-6-125. Physician services reimbursement. (1) The fee for a covered service provided by a physician under the medicaid program is determined by multiplying a percentage of the conversion factor times the relative value unit for that service times any applicable policy adjusters.

(2) ~~(a) For state fiscal years 2008 and 2009, the percentage of the conversion factor will be determined by the appropriation of the 2007 legislature for physician reimbursement.~~

~~(b) For state fiscal year 2010, the 2009 percentage of the conversion factor will be increased by a minimum of 6%.~~

~~(c) For state fiscal year 2011, the 2010 percentage of the conversion factor will be increased by a minimum of 6%.~~

~~(d) For state fiscal year 2012, the 2011 percentage of the conversion factor will be increased by a minimum of 6%.~~

~~(e) For state fiscal year 2013, the 2012 percentage of the conversion factor will be increased by a minimum of 6%.~~

(a) For state fiscal years 2011 through 2013, the conversion factor is \$40.09. The conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the fiscal year 2010 reimbursement rate.

~~(b)~~ *(b) For state fiscal year 2014 and for each subsequent state fiscal year thereafter, the percentage of, the conversion factor will must be equivalent increased, at a minimum, to state fiscal year 2013 by the same percentage increase as the consumer price index for medical care for the previous year, as calculated by the bureau of labor statistics of the United States department of labor.”*

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

53-6-126. Providing conversion factors to department.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2010.

Approved May 12, 2011

CHAPTER NO. 398

[SB 292]

AN ACT DEFINING “IN SITU COAL GASIFICATION”; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR IN SITU COAL GASIFICATION; CLARIFYING THAT INJECTIONS INTO GROUNDWATER FOR IN SITU COAL GASIFICATION ARE NOT POLLUTION; AND AMENDING SECTIONS 75-5-103 AND 82-4-203, MCA.

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

Section 1. Rulemaking — in situ coal gasification. (1) Within 1 year of [the effective date of this act] and in accordance with subsection (3), the board shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the board may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The board shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1).

Section 2. Section 75-5-103, MCA, is amended to read:

“75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Associated supporting infrastructure” means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) “Base numeric nutrient standards” means numeric water quality standards for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) “Board” means the board of environmental review provided for in 2-15-3502.

(4) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) “Council” means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) “Currently available data” means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) “Degradation” means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(9) “Disposal system” means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) “Effluent standard” means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) “Energy development project” means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

- (iv) refining crude oil or natural gas;
 - (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
 - (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
 - (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.
- (b) The term does not include a nuclear facility as defined in 75-20-1202.
- (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.
- (13) "High-quality waters" means all state waters, except:
- (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and
 - (b) surface waters that:
 - (i) are not capable of supporting any one of the designated uses for their classification; or
 - (ii) have zero flow or surface expression for more than 270 days during most years.
- (14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.
- (15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.
- (16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.
- (17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.
- (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.
- (19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.
- (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.
- (21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.
- (22) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of

pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of temporary nutrient criteria, and the implementation of those standards and criteria together with associated economic impacts.

(23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(24) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(26) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(27) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(29) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

~~(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.~~

~~(b) The term does not include:~~

~~(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;~~

~~(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;~~

~~(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.~~

(c) *Contamination referred to in subsection (29)(b)(iii) does not require a mixing zone.*

(30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(32) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not

limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions.

Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

- (a) electric transmission and distribution facilities;
- (b) pipeline facilities;
- (c) aboveground ponds and reservoirs and underground storage reservoirs;
- (d) rail transportation;
- (e) aqueducts and diversion dams;
- (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
- (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of temporary nutrient criteria, and the implementation of those standards and criteria together with associated economic impacts.

(23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(24) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(26) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(27) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(29) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

~~(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.~~

~~(c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, is not pollution and does not require a mixing zone.~~

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections (29)(b)(iii) and (29)(b)(iv) does not require a mixing zone.

(30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(32) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 3. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance *as defined in 82-4-203* is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(8) "Board" means the board of environmental review provided for in 2-15-3502.

(9) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

(10) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(11) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated

with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(15) "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

(18) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(19) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(25) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm

to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27) (a) *"In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.*

(b) *In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.*

(27)(28) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(28)(29) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

(29)(30) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(30)(31) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

(31)(32) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(32)(33) "Movable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(33)(34) "Mineral" means coal and uranium.

(34)(35) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(35)~~~~(36)~~ "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(36)~~~~(37)~~ "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(37)~~~~(38)~~ "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(38)~~~~(39)~~ "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(39)~~~~(40)~~ "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(40)~~~~(41)~~ "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(41)~~~~(42)~~ "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(42)~~~~(43)~~ "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(44) *“Recovery fluid” means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.*

(43)(45) *“Recreation” means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.*

(44)(46) *“Reference area” means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.*

(45)(47) *“Remining” means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).*

(46)(48) *“Residential” means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.*

(47)(49) *“Restore” or “restoration” means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.*

(48)(50) (a) *“Strip mining” means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.*

(b) *For the purposes of this part only, strip mining also includes remining and coal preparation.*

(c) *The terms “remining” and “coal preparation” are not included in the definition of “strip mining” for purposes of Title 15, chapter 35, part 1.*

(49)(51) *“Subsidence” means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.*

(50)(52) *“Surface owner” means:*

(a) *a person who holds legal or equitable title to the land surface;*

(b) *a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;*

(c) *the state of Montana when the state owns the surface; or*

(d) *the appropriate federal land management agency when the United States government owns the surface.*

(51)(53) *“Topsoil” means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.*

~~(52)~~(54) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

~~(53)~~(55) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(54)~~(56) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(55)~~(57) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(56)~~(58) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 12, 2011

CHAPTER NO. 399

[SB 295]

AN ACT REVISING THE MANNER OF APPRAISING CERTAIN PROPERTIES FOR PROPERTY TAX PURPOSES; ALLOWING ANNUAL INFORMAL REVIEWS OF CLASSIFICATION AND APPRAISAL FOR AGRICULTURAL, RESIDENTIAL AND COMMERCIAL, AND FOREST PROPERTY; REQUIRING CERTAIN INFORMATION BE PROVIDED TO AN OBJECTOR FOR USE IN INFORMAL REVIEWS; PROHIBITING AN INCREASE IN THE VALUE OF PROPERTY THROUGH AN INFORMAL REVIEW EXCEPT DUE TO A PHYSICAL CHANGE IN A PROPERTY OR A

MISTAKE IN A PROPERTY DESCRIPTION; PROVIDING THAT THE CONSIDERATION PAID ON A MORTGAGE FORECLOSURE MUST BE DISCLOSED IN A REALTY TRANSFER CERTIFICATE; REQUIRING THE USE OF THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE; REQUIRING THAT ERRONEOUS CALCULATION ERRORS MUST BE CORRECTED FOR ALL AFFECTED PROPERTIES; AMENDING SECTIONS 15-7-102, 15-7-307, 15-8-111, AND 15-8-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 15-7-102, MCA, is amended to read:

“15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) except as provided in subsection (1)(b), change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer’s informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans’ residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as

provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose. *For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days after receiving the notice of classification and appraisal from the department. For class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle.*

(b) *For properties valued using sales price or the capitalization of net income method as an indication of value, the form must include a provision that the objector agrees to confidentiality requirements for receipt of comparable sales data from information received from realty transfer certificates under 15-7-308. Within 4 weeks of submitting an objection, if the objection relates to residential and commercial property, the department shall provide the objector by posted mail or e-mail, unless the objector waives receiving the information, with:*

(i) *data from comparable sales used by the department to value the property;*

(ii) *the methodology and sources of data used by the department in the valuation of the property; and*

(iii) *if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.*

(c) *For properties valued using the capitalization of net income method as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.*

(d) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(e) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. *The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property that is kept by the department and used for calculating the appraised value.* In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

- (a) the taxpayer has submitted an objection in writing; and
- (b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 2. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate — exceptions. The certificate required by this part applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

- (1) an instrument recorded prior to July 1, 1975;
- (2) the sale of agricultural land when the land is used for agricultural purposes;
- (3) the sale of timberland when the land is used for producing timber;
- (4) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;
- (5) an instrument that (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;
- (6) a transfer pursuant to a court decree;
- (7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;
- (8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;
- (9) a transfer of decedents' estates;
- (10) a transfer of a gift;
- (11) a transfer between husband and wife or parent and child with only nominal actual consideration for the transfer;
- (12) an instrument the effect of which is to transfer the property to the same party or parties;
- (13) a sale for delinquent taxes or assessments, a sheriff's sale, or a sale pursuant to a bankruptcy action court order, ~~or mortgage foreclosure;~~

(14) a transfer made in contemplation of death.”

Section 3. Section 15-8-111, MCA, is amended to read:

“15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization-of-net-income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection ~~(3)~~ (4), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) In valuing class four residential and commercial property described in 15-6-134, the department shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the department shall use information available from any source considered reliable. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued.

~~(3)~~(4) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) for condominium property, the department shall establish the value as provided in subsection ~~(4)~~ (5); and

(d) as otherwise authorized in Titles 15 and 61.

~~(4)~~(5) (a) Subject to subsection ~~(4)~~(e) (5)(c), if sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium

units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection ~~(4)(e)~~ (5)(c), if sufficient, relevant information on income is made available to the department, the department shall use the capitalization-of-net-income method to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the construction-cost method. When using the construction-cost method, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.

~~(5)~~(6) For purposes of taxation, assessed value is the same as appraised value.

~~(6)~~(7) The taxable value for all property is the percentage of market or assessed value established for each class of property.

~~(7)~~(8) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-222.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

~~(8)~~(9) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town.”

Section 4. Section 15-8-601, MCA, is amended to read:

“15-8-601. Assessment revision — conference for review. (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that

any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(c) If an erroneous assessment is due to a calculation error by the department, the department shall revise the assessment of like properties that were also erroneously assessed using the same calculation.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment that it considers proper. Any party to the conference aggrieved by the action of the department or a taxpayer who does not request a conference may appeal to the county tax appeal board within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference.

(4) The department shall enter in the property tax record all changes and corrections made by it."

Section 5. Effective date. [This act] is effective July 1, 2012.

Approved May 12, 2011

CHAPTER NO. 400

[SB 348]

AN ACT CLARIFYING THE FUNDING OF WOLF MANAGEMENT; AUTHORIZING THE USE OF STATE FUNDS FOR COLLARING AND CONTROL OF WOLVES; AMENDING SECTION 87-5-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the gray wolf was listed as an endangered species under the Endangered Species Act (ESA) in 1973; and

WHEREAS, gray wolves were reintroduced in Yellowstone National Park and central Idaho in 1995 and 1996 by the United States Fish and Wildlife Service (USFWS) to speed up recovery of the gray wolf population in the Northern Rocky Mountain region; and

WHEREAS, the biological requirement established by the USFWS for the recovery of the gray wolf population in the Northern Rocky Mountains is a minimum of 30 breeding pairs and 300 wolves in Montana, Idaho, and Wyoming combined or effectively 10 breeding pairs and 100 wolves per state; and

WHEREAS, the USFWS approved the Montana Gray Wolf Conservation and Management Plan in January 2004, under which Montana agreed to use adaptive management strategies to ensure its portion of the biological recovery goal is met; and

WHEREAS, the gray wolf population in Montana, Idaho, and Wyoming achieved the biological requirements of 30 breeding pairs and 300 wolves in 2002; and

WHEREAS, the most recent data available show that at the end of 2009, the estimated minimum number of wolves in Montana was 524 wolves with an estimated minimum of 37 breeding pairs in Montana; and

WHEREAS, the final environmental impact statement prepared by the Montana Department of Fish, Wildlife, and Parks (MDFWP) for the Montana Gray Wolf Conservation and Management Plan, submitted to the USFWS in October 2003, estimated that MDFWP's required budget for the wolf management alternative that was ultimately selected would be \$924,739 to \$1,062,399, of which 90% would be provided by the federal government under Section 6 of the ESA and 10% would be the responsibility of Montana; and

WHEREAS, the 90%-10% cost share was never implemented because the USFWS allocated funding directly to MDFWP rather than it being necessary for MDFWP to request funding under Section 6 of the ESA; and

WHEREAS, the USFWS allocated an average of \$573,000 annually to Montana for wolf management under a 5-year contract that expired June 30, 2010; and

WHEREAS, that annual allocation was far below the estimate included in the final environmental impact statement; and

WHEREAS, under MDFWP's new contract for July 1, 2010, through June 30, 2015, the USFWS allocates only \$626,000 to Montana for the entire 5-year period.

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

Section 1. Section 87-5-132, MCA, is amended to read:

"87-5-132. Use of radio-tracking collars for monitoring wolf packs.

(1) As part of a wolf management plan approved by the department, a radio-tracking collar *or a collar that uses global positioning system technology* must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department ~~shall may~~ expend ~~only the state and~~ federal funds for wolf management purposes to fulfill the requirements of this section.

(3) The department may collaborate and cooperate with other state and federal agencies to fulfill the requirements of this section."

Section 2. Funding for wolf management. (1) The department shall allocate \$900,000 annually for wolf management.

(2) For the purposes of this section, the term “management” has the same meaning provided in 87-5-102 and includes:

- (a) wolf collaring conducted pursuant to 87-5-132; and
- (b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Not more than 25% of the total funding allocated under this section may be used for administrative costs.

(4) Pursuant to 87-1-201, the department may allocate funds from any source to meet the requirements of this section.

(5) The department may contract with the United States department of agriculture wildlife services and county governments for the purposes of this section.

Section 3. Appropriation. (1) The following money is appropriated to the department of fish, wildlife, and parks from the general license account for the purposes established in [section 1]:

Fiscal year 2012	\$274,000
Fiscal year 2013	\$274,000

(2) The following money is appropriated to the department of fish, wildlife, and parks from federal funds received from the United States fish and wildlife service for wolf management and the purposes established in [section 1]:

Fiscal year 2012	\$626,000
Fiscal year 2013	\$626,000

(3) The department may not expend more than 25% of the total appropriation in each fiscal year on administrative costs.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 401

[SB 409]

AN ACT GENERALLY REVISING STATE LAND CABIN SITE LAWS; AUTHORIZING AN ALTERNATIVE RENTAL MARKET VALUATION COMPETITIVE BID PROCESS; AUTHORIZING THE SALE OF STATE-LEASED CABIN OR HOME SITES OR CITY OR TOWN LOTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-208, AND 77-2-318, MCA; REPEALING SECTION 77-2-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Alternative rental market valuation — open competitive bidding process. (1) (a) In order to establish full rental market value, the board shall establish an open competitive bidding process for all vacant cabin site properties. Except as provided in subsection (1)(c), the minimum bid must be initially set at 2% of the most recent cabin site appraisal value as determined by the department of revenue.

(b) (i) The board shall, within 180 days from the date that a cabin site property becomes vacant, put that site up for open competitive bidding.

(ii) In providing notice of the open competitive bidding process, the board shall notify prospective bidders that a bidder other than the current lessee or licensee is obligated to purchase the improvements pursuant to 77-1-208(4) if that bidder offers the highest bid.

(iii) A lease or license term for a bidder that offers the highest bid and acquires a lease or license must be for a minimum period of 15 years.

(iv) The fee for each subsequent year must be adjusted using the average annual consumer price index as published by the U.S. bureau of labor statistics.

(c) If pursuant to subsection (1)(a) the board does not receive the minimum bid within 180 days, the board may reduce the bid incrementally until a bid is received.

(2) Subject to [section 2], a lessee or licensee may voluntarily put the lessee's or licensee's cabin site up for open competitive bid as provided in subsection (1) of this section. A lessee choosing to voluntarily place a cabin site lease up for competitive bid is not entitled to a preference right to meet the high bid. Prior to the open competitive bidding process, the board shall follow the procedures provided in 77-1-208(3) to establish the market value of improvement.

(3) By January 1, 2012, the board shall adopt rules to ensure that:

(a) the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value; and

(b) the information used to determine the rental market percentage pursuant to this section is posted on the department's website and periodically updated.

Section 2. Rental market valuation lease program — transition. (1)

(a) Subject to subsection (2), the board shall offer all existing cabin site lessees or licensees the option of 15-year lease contracts based on the rental market valuation process provided in [section 1].

(b) (i) At least three winning bids made pursuant to [section 1] must be referenced against the most recent appraised value of the cabin site property by the department of revenue in order to establish a rental market percentage. All rental market percentages that have been determined pursuant to [section 1] must be grouped together by geographic location and averaged together to determine a final rental market percentage for each geographic location. If there are not three winning bids in any one geographic location, then three bids from similar locations may be averaged to establish a rental market percentage.

(ii) The final rental market percentage determined for each geographic location pursuant to this subsection (1)(b) must be applied to the department of revenue's most recent appraised value for each cabin site property in that location that did not go through the open competitive bidding process to determine the initial lease amount for each cabin site property.

(c) If no properties in a particular geographic location go through an open competitive bidding process, the most applicable comparable location, as determined based on professional appraisal standards, must be chosen and the final rental market percentage must be applied as provided in subsection (1)(b).

(2) The lease amount for the first year must be set as provided in subsection (1). The annual lease rental fee for each subsequent year must be adjusted using the average annual consumer price index as published by the U.S. bureau of labor statistics.

(3) By January 1, 2012, the board shall adopt rules for the orderly transition for cabin site lessees or licensees who have chosen the lease option pursuant to subsection (1) that is consistent with the board's constitutional fiduciary duty of attaining full rental market value.

(4) Nothing in this chapter prevents:

(a) an existing lessee or licensee from completing or renewing the lessee's or licensee's current lease or license based on existing methods of valuation as provided in 77-1-208; or

(b) a lessee or licensee that has abandoned a lease or license from bidding on the abandoned lease or license.

Section 3. Section 77-1-208, MCA, is amended to read:

“77-1-208. Cabin site licenses and leases — method of establishing value. (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on *one of the following methods*:

(a) appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15.

(b) *establishing full rental market value through the use of an open competitive bidding process as provided in [section 1].*

(2) *A current licensee or lessee may complete or renew the licensee's or lessee's current lease based on valuation methods provided in subsection (1)(a), or at the end of the lease or license contract, the licensee or lessee may choose to proceed with the valuation option provided in subsection (1)(b).*

(2)(3) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3)(4) (a) ~~The~~ *Subject to subsection (4)(b), the board shall follow the procedures set forth in 77-6-302, 77-6-303, and 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.*

(b) (i) *A subsequent licensee or lessee may not take occupancy unless the license or lease contract and the sale of improvements have been finalized. If a winning bidder has been identified and the transaction for the sale of the improvements is in process, the current lessee shall pay a prorated lease fee based on the current lease until the date that the sale of the improvements is finalized.*

(ii) *The valuation of improvements must be applicable to residential property inclusive of all improvements.*

(iii) *A licensee or lessee may assign or rent any improvements.*

(iv) *Within 3 years of canceling, terminating, or abandoning a cabin site lease, the owner of the improvements shall sell the improvements, remove the*

improvements, or transfer ownership of the improvements to the state. If ownership is transferred to the state, proceeds from the sale of the improvements must be paid to the owner who transferred the improvements. The board shall set the conditions of the sale of transferred improvements in order to sell the improvements in an expedient manner.”

Section 4. Section 77-2-318, MCA, is amended to read:

“77-2-318. Sale of leased cabin or home sites or city or town lots. (1)

At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that ~~was is~~ under lease ~~on October 1, 1989~~ *during the 15th year of any 15-year lease that was established through the open competitive bidding process or through the transition process provided for in [section 2] or subsection (4) of this section.*

(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

~~(4) The sale of a leased cabin or home site or city or town lot under 77-2-318 through 77-2-320 must be completed no later than 10 years after October 1, 1989. A lessee may request a lease sale at any time during the 10-year period. Upon request, the board may grant a lessee with a disability or a lessee 65 years of age or older an additional 10-year period to request a sale of leased land.~~

(4) By January 1, 2012, the board shall adopt rules to ensure that the sales process authorized pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for sale at any given time is consistent with the board’s constitutional duty of attaining full market value.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes.”

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

77-2-319. Conservation easement for certain sales.

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 and 2].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

CHAPTER NO. 402

[SB 125]

AN ACT PROHIBITING MONTANA STATE GOVERNMENT FROM ADMINISTERING FEDERAL HEALTH INSURANCE PURCHASE REQUIREMENTS.

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

Section 1. Legislative finding — direction to state agencies not to administer health insurance purchase requirement. (1) The legislature finds that the enactment by the U.S. congress of Public Law 111-148 and Public Law 111-152, requiring individuals to purchase health insurance and imposing on certain employers a liability for an assessable payment for not contributing toward employees' health insurance, will cause unneeded expense and inconvenience to individuals without health insurance and to those certain employers.

(2) Notwithstanding the provisions of Title 2, chapter 1, part 4, an agency of this state, as defined in 2-18-101, may not implement or enforce in any way the provisions of Public Law 111-148 and Public Law 111-152 or any federal regulation or policy implementing Public Law 111-148 and Public Law 111-152 that relates to the requirement for individuals to purchase health insurance and maintain minimum essential health insurance coverage.

(3) In addition to the provisions in subsection (2), the prohibition under this section includes:

(a) for the purposes of public employers, a prohibition on requiring any employee as defined in 2-18-701 to obtain or maintain a policy of health insurance to comply with Public Law 111-148 and Public Law 111-152; and

(b) participation by a state official or state employee on a board, a study commission, or a related entity of the national association of insurance commissioners assigned to recommend provisions to implement the individual mandate to purchase health insurance under the federal health care reforms provided in Public Law 111-148 and Public Law 111-152.

(4) This section does not interfere with:

(a) voluntary actions taken by individuals to purchase health insurance or to participate in health insurance exchanges; or

(b) the state requirement to purchase motor vehicle liability insurance as provided in 61-6-301.

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

Approved May 13, 2011

CHAPTER NO. 403

[SB 207]

AN ACT CLARIFYING THE REGULATION OF BISON; GRANTING RULEMAKING AUTHORITY TO ESTABLISH A PERMIT AND INSPECTION SYSTEM FOR THE TRANSPORTATION OF BISON; PROVIDING DEFINITIONS; AMENDING SECTIONS 81-1-101, 81-2-120, 81-2-121, 81-3-201, 81-4-603, 81-5-101, 85-1-104, AND 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Permit and inspection system for transportation of bison.

(1) Except as otherwise provided by law, the department shall adopt rules imposing a permit and inspection system for the transportation of bison into and out of counties and into and out of the state for the purposes of tracking movement of animals and collecting per capita assessments.

(2) A person who purposely or knowingly transports bison in violation of rules adopted pursuant to this section is guilty of a misdemeanor and shall be fined not more than \$1,000 or be imprisoned in the county jail for not more than 6 months, or both.

Section 2. Section 81-1-101, MCA, is amended to read:

“81-1-101. (Temporary) Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) (a) *“Bison” means domestic bison or feral bison.*

(b) *The term does not include:*

(i) *wild buffalo or wild bison; or*

(ii) *for the purposes of chapter 9, buffalo.*

(1)(2) *“Board” means the board of livestock provided for in 2-15-3102, except as provided in Title 81, chapter 23.*

(2)(3) *“Department” means the department of livestock provided for in Title 2, chapter 15, part 31.*

(4) *“Domestic bison” means a bison owned by a person.*

(5) *“Feral bison” means a domestic bison or progeny of a domestic bison that has escaped or been released from captivity and is running at large and unrestrained on public or private land.*

(6) *“Wild buffalo” or “wild bison” means a bison that has not been reduced to captivity and is not owned by a person. (Terminates June 30, 2011—sec. 20, Ch. 361, L. 2009.)*

81-1-101. (Effective July 1, 2011) Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) (a) *“Bison” means domestic bison or feral bison.*

(b) *The term does not include:*

(i) *wild buffalo or wild bison; or*

(ii) *for the purposes of chapter 9, buffalo.*

(1)(2) *“Board” means the board of livestock provided for in 2-15-3102.*

(2)(3) *“Department” means the department of livestock provided for in Title 2, chapter 15, part 31.*

(4) *“Domestic bison” means a bison owned by a person.*

(5) *“Feral bison” means a domestic bison or progeny of a domestic bison that has escaped or been released from captivity and is running at large and unrestrained on public or private land.*

(6) *“Wild buffalo” or “wild bison” means a bison that has not been reduced to captivity and is not owned by a person.”*

Section 3. Section 81-2-120, MCA, is amended to read:

“81-2-120. Management of wild buffalo or wild bison for disease control. (1) Whenever a publicly owned wild buffalo or *wild* bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or *wild* bison may jeopardize Montana’s compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or *wild* bison may be physically removed by the safest and most expeditious means from within the state boundaries, including

but not limited to hazing and aversion tactics or capture, transportation, quarantine, or delivery to a department-approved slaughterhouse.

(b) The live wild buffalo or *wild* bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(c) The live wild buffalo or *wild* bison may be taken through limited public hunts pursuant to 87-2-730 when authorized by the state veterinarian and the department.

(d) The live wild buffalo or *wild* bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or *wild* bison that are certified by the state veterinarian as brucellosis-free may be:

(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or *wild* bison; or

(ii) transferred to qualified tribal entities that participate in the disease control program provided for in this subsection (1)(d). Acquisition of wild buffalo or *wild* bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.

(e) Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or *wild* bison must be deposited in the state special revenue fund to the credit of the department.

(f) Any revenue generated in excess of the costs referred to in subsection (1)(d)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).

(2) Whenever the department is responsible for the death of a wild buffalo or *wild* bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or *wild* bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or *wild* bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or *wild* bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or *wild* bison that enter Montana on private or public land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with other state-administered or federally administered livestock disease control programs.”

Section 4. Section 81-2-121, MCA, is amended to read:

“81-2-121. Taking of publicly owned wild buffalo or *wild* bison that are present on private property — notice — supplemental feeding — penalty.

(1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or *wild* bison that is suspected of carrying disease and that is present on the landowner’s private property and is potentially associating with or otherwise threatening the landowner’s livestock if:

(a) the landowner or agent notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or *wild* bison that is present on the landowner’s property;

(b) the landowner or agent makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) the landowner or agent is not in violation of subsection (2).

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes.”

Section 5. Section 81-3-201, MCA, is amended to read:

“81-3-201. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Deputy state stock inspector” means a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) “Feedlot” means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) “Livestock” means a bovine animal, *domestic bison*, horse, mule, or ass, regardless of its age or sex.

(4) “Person” means an individual, partnership, corporation, association, firm, or entity not enumerated that is capable of owning or controlling livestock.

(5) “Specially qualified deputy stock inspector” means a deputy state stock inspector who has been certified by the department, under rules adopted pursuant to 81-3-202, as qualified to conduct an inspection for a permanent transportation permit for a saddle, work, or show horse.

(6) “State stock inspector” means an employee of the department of livestock designated by the department as a state stock inspector.”

Section 6. Section 81-4-603, MCA, is amended to read:

“81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into possession an estray found in the stock inspector’s district and, *except as provided in 81-2-120*, shall either:

(a) ship or arrange for the shipment of the estray to a licensed livestock market for sale; or

(b) hold the estray and care for the estray in the cheapest and most practicable manner for at least 10 days and not more than 30 days after public

notice is published as provided in subsection (2). During the holding period, the stock inspector shall advertise that the estray is being held and that unless the estray is claimed by the owner, the stock inspector will on a date specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice must be published in the newspaper doing the county printing of the county in which the estray is found and on the department's website and in each livestock market brand office and county sheriff's office in the state. This notice must be published in the newspaper at least one time and must contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) ~~The~~ *Except as provided in 81-2-120, the* proceeds from the sale must be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department."

Section 7. Section 81-5-101, MCA, is amended to read:

"81-5-101. Moving livestock from customary range forbidden. (1) A person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, *domestic* bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding \$500, or both.

(2) A person who negligently moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, *domestic* bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by:

- (a) a term of imprisonment in the county jail not to exceed 6 months;
- (b) a fine not exceeding:
 - (i) \$25 for a first offense;
 - (ii) \$250 for a second offense; and
 - (iii) \$500 for a third or subsequent offense; or
- (c) both imprisonment and the appropriate fine.

(3) Prior to the imposition of the penalty provided for in subsection (1) or (2), the owner of the livestock shall file a complaint with the department. The department shall conduct an investigation to determine the circumstances under which the livestock were moved."

Section 8. Section 81-5-104, MCA, is amended to read:

"81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation. (1) The use of a vehicle, money, equipment, or personalty for the theft or transportation of a stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, alpaca, *domestic* bison, hogs, poultry, ostrich, rhea, emu, or the products of stolen livestock is unlawful. Any vehicle, money, equipment, or personalty used for the theft or unlawful transportation or upon probable cause believed to be devoted wholly or in part to the theft or unlawful transportation must be seized and held.

(2) Within 45 days after the seizure, a peace officer or officer of the agency that seizes the property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall serve the summons upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for unlawful transportation; or

(b) the vehicle owner is not in collusion with the party or parties guilty of the theft.”

Section 9. Section 87-1-216, MCA, is amended to read:

“87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious

disease, pursuant to 87-2-730. *The department may, following consultation with the department of livestock, adopt rules to authorize the taking of bison where and when necessary to prevent the transmission of a contagious disease.*

(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.

(4) When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock.”

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chapter 5, part 1, and the provisions of Title 81, chapter 5, part 1, apply to [section 1].

Section 12. Name change — directions to code commissioner. The code commissioner is directed to change the phrase “wild buffalo or bison” to “wild buffalo or wild bison” wherever the phrase appears in legislation enacted by the 2011 legislature if the legislation amends Title 81 or creates new sections that are codified in Title 81.

Section 13. Effective date. [This act] is effective on passage and approval.

Approved May 13, 2011

CHAPTER NO. 404

[SB 229]

AN ACT AUTHORIZING CERTAIN SEPARATE LEGAL ENTITIES CREATED UNDER THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT TO CONTRACT WITH THE PUBLIC EMPLOYEES’ RETIREMENT BOARD TO PROVIDE RETIREMENT SYSTEM COVERAGE FOR EMPLOYEES OF A LEGAL ENTITY.

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

Section 1. Authorization to become contracting employer in public employees’ retirement system. A separate legal entity created and authorized under this part that manages or operates an irrigation project may contract with the public employees’ retirement board as provided in Title 19, chapter 3, part 2, to become a contracting employer in the public employees’ retirement system.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 11, part 1, and the provisions of Title 18, chapter 11, part 1, apply to [section 1].

Approved May 13, 2011

CHAPTER NO. 405

[SB 265]

AN ACT PROVIDING FOR A TAX ABATEMENT FOR CERTAIN RESIDENTIAL GRAY WATER SYSTEMS AND COMMON GRAY WATER AND POTABLE WATER SYSTEMS; ESTABLISHING REQUIREMENTS FOR THE RESIDENCES AND FOR A MINIMUM NUMBER OF OCCUPANTS TO QUALIFY; PROVIDING FOR THE ABATEMENT DURING CONSTRUCTION AND FOR 10 YEARS FOLLOWING COMPLETION OF CONSTRUCTION; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE USE OF THE ABATEMENT; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) “Common gray water and potable water system” means a gray water system and a potable water system that are common elements of a multiple dwelling project.

(2) (a) “Gray water system” means a system to treat and distribute untreated household wastewater that meets the requirements of 75-5-305(2), 75-5-325 through 75-5-327, and all administrative rules and local government regulations conforming with those provisions.

(b) Household wastewater does not include water that is or has come into contact with toilet water; wastewater from kitchen sinks, water softeners, and dishwashers; or laundry water used for washing infectious garments, including diapers.

(3) “Multiple dwelling project” means:

(a) a residential condominium on common land consisting of residential units in single or multiunit structures for at least 25 occupants; or

(b) a class four residential building as described in 15-6-134, or that portion of a class four building that is used for residential purposes, that has multiple residential units for at least 25 occupants and includes as much of the surrounding land, not exceeding 5 acres, as is reasonably necessary for its residential use.

(4) “Potable water system” means a privately owned public water supply system as defined in 75-6-102 that is used in common by all the dwellings of a multiple dwelling project.

(5) “Residential dwelling” means any class four residential dwelling described in 15-6-134 that is a single-family dwelling unit, including a trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 5 acres, as is reasonably necessary for its use as a dwelling.

Section 2. Gray water system for newly constructed residence — tax abatement. (1) A residential dwelling that is under construction or that is newly constructed with a residential gray water system is taxed at 91% of its taxable market value during the course of the construction and for 10 years after completion of construction as provided in this section.

(2) To receive a tax abatement under this section, a taxpayer shall apply, on a form provided by the department, to the department on or before April 15 of the year for which the first abatement is claimed for property under construction and for the first year of the completion of construction but not later

than 1 year after the completion of the construction. The claimant shall provide a certification from the local board of health pursuant to 50-2-116 that the residential dwelling is under construction or was constructed with a gray water system that meets the requirements of this section. The department may require other information that it considers necessary to determine the eligibility of the residential dwelling for a property tax abatement.

(3) An abatement granted under this section remains in effect through the 10th year following the year construction was completed.

Section 3. Common gray water and potable water systems for newly constructed multiple dwelling projects — tax abatement. (1) A multiple dwelling project that is under construction or that is constructed with a common gray water and potable water system is taxed at 91% of the taxable market value of the project or taxable market value of each residential condominium unit during the course of the construction and for 10 years after completion of construction as provided in this section.

(2) To receive a tax abatement, a taxpayer shall apply, on a form provided by the department, to the department on or before April 15 of the year for which the first abatement is claimed for property under construction and for the first year of the completion of construction but not later than 1 year after the completion of the construction of the residential units or, if construction is to occur over a multiyear period, after the completion of the first residential unit. The claimant shall provide a certification from the local board of health pursuant to 50-2-116 that the residential dwelling is under construction or was constructed with a common gray water and potable water system that meets the requirements of this section. The department may require other information that it considers necessary to determine the eligibility of the residential dwelling for a property tax abatement.

(3) An abatement granted under this section remains in effect through the 10th year following the year construction was completed.

(4) Only property with a common gray water and potable water system is eligible for the property tax abatement provided in this section.

Section 4. Change in property — fraudulent application. (1) A taxpayer qualifying for a property tax abatement under [section 2 or 3] shall report to the department any change to the subject property or to the gray water system under [section 2] or common gray water and potable water system under [section 3] that may affect the property's qualification for the tax abatement.

(2) A taxpayer who applies for a tax abatement under [section 2 or 3] and submits a false or fraudulent application for a property tax abatement is guilty of false swearing under 45-7-202.

Section 5. Report to interim committee. By September 15, 2014, the department shall provide a report to the revenue and transportation interim committee on the use of property tax abatement under [sections 2 and 3]. The committee shall, based on information contained in the report, make recommendations to the next legislature on the continuation or structure of the abatement.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective July 1, 2011.

Section 8. Applicability. [This act] applies to residential dwellings and multiple dwelling projects constructed after June 30, 2011.

Approved May 13, 2011

CHAPTER NO. 406

[SB 266]

AN ACT REVISING THE LOCAL ABATEMENT OF THE COAL GROSS PROCEEDS TAX ON COAL PRODUCED BY A NEW OR EXPANDING UNDERGROUND COAL MINE; PROVIDING THAT THE TAX ABATEMENT MAY BE 50% OR LESS FOR AN UNDERGROUND MINE TAXED AT 5% OF THE VALUE OF COAL; PROVIDING AN INITIAL COAL GROSS PROCEEDS TAX OF 2.5% ON COAL PRODUCED FROM A NEW OR EXISTING UNDERGROUND MINE FOR AN INITIAL 10-YEAR PERIOD; AMENDING SECTIONS 15-23-703 AND 15-23-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-23-703, MCA, is amended to read:

“15-23-703. Taxation of gross proceeds — taxable value for county classification and nontax purposes. (1) (a) The department shall compute from the reported value of coal gross proceeds a tax roll that must be transmitted to the county treasurer on or before September 15 of each year. The department may not levy or assess any mills against coal gross proceeds but shall, subject to subsection (1)(b) *and except as provided in subsection (1)(c)*, levy a tax of 5% against the value of coal as provided in 15-23-701(4). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in 15-23-715, the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by ~~50%~~ *the percentage amount of the tax abated by the county under 15-23-715.*

(c) (i) *For tax years beginning after December 31, 2011, the initial tax on coal mined from a new underground coal mine is 2.5% against the value of coal as provided in 15-23-701(4) for the first 10 years of coal production. After 10 years, coal production from the mine is taxed as provided in subsection (1)(a).*

(ii) *For tax years beginning on or after January 1, 2011, and ending December 31, 2020, the initial tax rate under subsection (1)(c)(i) applies to coal mined from an existing underground coal mine producing coal from the mine as of December 31, 2010. For tax years beginning after December 31, 2020, coal production is taxed as provided in subsection (1)(a).*

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) (a) Except as provided in subsections (4) and (7) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (5), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (6), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(4) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under 15-23-715, the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

(5) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (3)(b)(i), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in the previous fiscal year.

(b) If the allocation in subsection (5)(a) exceeds the total budget of a taxing unit, the commissioners may direct the county treasurer to reallocate the excess to any taxing unit within the county.

(6) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in the previous fiscal year.

(b) If the allocation under subsection (6)(a) exceeds the total budget for a fund, the trustees may reallocate the excess to any budgeted fund of the school district.

(7) Except as provided in subsections (8) and (9), the county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(8) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (7) in the same manner as provided in subsection (5).

(9) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under subsection (7) in the same manner as provided in subsection (6).”

Section 2. Section 15-23-715, MCA, is amended to read:

“15-23-715. New or expanding underground mines — tax abatement.

(1) A county may abate taxation under this chapter for production from a new or expanding underground coal mine *that is taxed at the rate provided in 15-23-703(1)(a)* by 50% or less for 5 or 10 years by directing the department to levy the tax at a lower tax rate as provided in 15-23-703(1)(b).

(2) An abatement must be authorized by the governing body of a county. Before an abatement authorization is effective, the school boards of all affected school districts must be notified of the abatement. The authorization must be made by a resolution of the county governing body after a public hearing. The county governing body shall publish notice of the hearing in a newspaper that meets the requirements of 7-1-2121. The notice must be published twice, with at least 6 days separating publications. The first publication may be no more than 30 days prior to the hearing and the last publication must be at least 3 days prior to the hearing.

(3) An abatement authorization may be made for a 5-tax-year period, and upon expiration of that period, it may be authorized for one more 5-tax-year period. *The abatement of taxation for the second 5-tax-year period may be 50% or less.* An abatement authorization must be made prior to the beginning of the property tax year in which abatement is in effect. The department must be notified of each abatement authorization prior to the beginning of the tax year.

(4) (a) Production from a new underground mine is all production from a mine that in the year prior to the tax year in which the first abatement will apply had production of less than 500,000 tons of coal and the production during the course of the abatement period is estimated to be and actually amounts to at least five times the preabatement production amount.

(b) Production from an expanding underground mine is that portion of the mine’s production that exceeds the average production for the previous 3 years. To qualify for the abatement, the total of the prior average production and the new production may not decrease during the time of the abatement.”

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

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

Approved May 13, 2011

CHAPTER NO. 407

[SB 286]

AN ACT REVISING COAL PROSPECTING LAWS; MODIFYING CERTAIN COAL PROSPECTING PROCEDURES; AMENDING SECTION 82-4-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 82-4-226, MCA, is amended to read:

“82-4-226. Prospecting permit. (1) Except as provided in subsection (8) (7), prospecting by any person on land not included in a valid strip-mining or

underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) ~~An~~ *Except for an application filed pursuant to subsection (8), an application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.*

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). In addition, *coal* prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through (6). However, *except for a prospecting operation for which a permit is required by subsection (7)(b), a person who conducts prospecting described in this subsection shall file with the department a notice of intent to prospect that*

contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit and that does not remove more than 250 tons of coal may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas, including plugging of prospecting holes in accordance with rules adopted by the board.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

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

Section 3. Applicability. [This act] applies to applications for prospecting permits pursuant to 82-4-226 submitted to the department of environmental quality on or after [the effective date of this act].

Approved May 13, 2011

CHAPTER NO. 408

[SB 297]

AN ACT DEFINING "COAL BENEFICIATION PLANT"; EXCLUDING COAL BENEFICIATION PLANTS FROM PERMITTING AND REGULATION UNDER THE MONTANA STRIP AND UNDERGROUND MINING RECLAMATION ACT; CLARIFYING THAT A COAL PREPARATION FACILITY REGULATED UNDER THAT ACT DOES NOT INCLUDE A FACILITY WHERE COAL IS PREPARED AND THEN CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON; CLARIFYING THAT A MINING OPERATION DOES NOT INCLUDE A FACILITY OR SURFACE PREMISES WHERE COAL IS CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON OR A COAL BENEFICIATION PLANT; AMENDING SECTION 82-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(8) "Board" means the board of environmental review provided for in 2-15-3502.

(9) “Coal beneficiation plant” means a commercial facility where coal is subject to coal preparation that is not operated, owned, or controlled by the mine operator of the mine providing the coal.

~~(9)~~(10) “Coal conservation plan” means the planned course of conduct of a ~~strip-~~ strip-mining or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(10)~~(11) (a) “Coal preparation” means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(11)~~(12) (a) “Coal preparation plant” means a commercial facility where coal is subject to coal preparation *in connection with a strip-mine or underground-coal-mine*. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(b) *The term does not mean:*

(i) *a facility where coal is prepared and converted into another energy form or to a gaseous or liquid hydrocarbon; or*

(ii) *a coal beneficiation plant.*

~~(12)~~(13) “Contour strip mining” means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(13)~~(14) “Cropland” means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(14)~~(15) “Degree” means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(15)~~(16) “Department” means the department of environmental quality provided for in 2-15-3501.

~~(16)~~(17) “Developed water resources” means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(17)~~(18) “Ephemeral drainageway” means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(18)~~(19) “Failure to conserve coal” means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(19)~~(20) “Fill bench” means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20)(21) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21)(22) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22)(23) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23)(24) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24)(25) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(25)(26) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a ~~strip-~~ *strip-mining* or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26)(27) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27)(28) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(28)(29) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

(29)(30) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(30)(31) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

(31)(32) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled,

water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(32)~~(33) “Minable coal” means coal that can be removed through ~~strip-~~*strip-mining* or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(33)~~(34) “Mineral” means coal and uranium.

~~(34)~~(35) (a) “Operation” means:

~~(a)~~(i) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, *except as provided in subsection (35)(b)(ii)*, including coal preparation plants; and

~~(b)~~(ii) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(b) *The term does not mean:*

(i) *the surface premises, facilities, railroad loops, roads, and equipment used in the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon;*

(ii) *a commercial facility or surface premises where coal that is converted into another energy form or a gaseous or liquid hydrocarbon is prepared; or*

(iii) *a coal beneficiation plant.*

~~(35)~~(36) (a) “Operator” means a person engaged in:

~~(a)~~(i) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

~~(b)~~(ii) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

~~(c)~~(iii) operating a coal preparation plant; or

~~(d)~~(iv) uranium mining using in situ methods.

(b) *The term does not mean a person operating a coal beneficiation plant.*

~~(36)~~(37) “Overburden” means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(37)~~(38) “Pastureland” means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(38)~~(39) “Perennial stream” means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(39)~~(40) “Person” means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(40)~~(41) “Prime farmland” means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(41)~~(42) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning ~~strip-~~ *strip-mining* or underground-coal-mining and reclamation operations under this part.

~~(42)~~(43) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

~~(43)~~(44) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

~~(44)~~(45) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(45)~~(46) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(46)~~(47) "Residential" means land used for ~~single-~~ *single-family* and multiple-family housing, mobile home parks, or other residential lodgings.

~~(47)~~(48) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(48)~~(49) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes:

(i) remining; and

(ii) coal preparation *operated in connection with a strip mine*.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(49)~~(50) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(50)~~(51) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(51)~~(52) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(52)~~(53) (a) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata.

(b) The term includes:

(i) mining by in situ methods; *and*

(ii) *coal preparation operated in connection with an underground mine.*

~~(53)~~(54) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(54)~~(55) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(55)~~(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(56)~~(57) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 2. Effective date — contingency. (1) [This act] is effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that [this act] is approved pursuant to 30 CFR 732.17.

(2) The department of environmental quality shall provide a copy of the notice described in subsection (1) to the code commissioner.

Approved May 13, 2011

CHAPTER NO. 409

[SB 298]

AN ACT PROVIDING THAT A GOVERNING BODY MAY NOT DENY A PROPOSED SUBDIVISION BASED SOLELY ON A CERTAIN WILDLAND-URBAN INTERFACE DESIGNATION; AND AMENDING SECTION 76-3-608, MCA.

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

Section 1. Section 76-3-608, MCA, is amended to read:

“76-3-608. Criteria for local government review. (1) The basis for the governing body’s decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision’s impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter;

and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner’s ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.”

Approved May 13, 2011

CHAPTER NO. 410

[SB 312]

AN ACT REVISING METAL MINE RECLAMATION LAWS; REQUIRING THAT DRAFT PERMITS BE ISSUED FOR COMPLETE AND COMPLIANT APPLICATIONS; REVISING COORDINATION OF PERMIT REVIEWS WITH THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, 82-4-342, AND 82-4-353, MCA.

WHEREAS, the metal mine reclamation laws provide substantive requirements for the permitting of metal mines in Montana; and

WHEREAS, the Montana Environmental Policy Act provides procedures for environmental assessment with respect to decisions of state agencies; and

WHEREAS, coordination of review of permit applications for compliance with substantive requirements of mine permitting statutes and environmental assessment of permit decisions would create efficiency, reduce burdens on state government, and require permit applicants to more fully bear the burden of providing complete permit applications that meet all requirements of the metal mine reclamation laws and other laws of the state related to mine permitting in a timely fashion; and

WHEREAS, completion of the requirements of the Montana Environmental Policy Act within the timeframes required can be facilitated by an initial determination of compliance with applicable permitting laws and regulations.
Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

“82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Abandonment of surface or underground mining” may be presumed when it is shown that continued operation will not resume.

(2) “Amendment” means a change to an approved operating or reclamation plan. ~~A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment. A major amendment is an amendment that may significantly affect the human environment. A minor~~

amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "*Completeness*" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(4)(5) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5)(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(6)(7) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7)(8) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8)(9) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9)(10) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

(10)(11) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11)(12) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12)(13) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(13)(14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14)(15) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will

be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(15)~~(16) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

~~(16)~~(17) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (16)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

~~(17)~~(18) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

~~(18)~~(19) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(19)~~(20) "Underground mining" means all methods of mining other than surface mining.

~~(20)~~(21) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(21)~~(22) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is an individual, that:
 - (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of

its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~ ~~82-4-303(17)(a)(i)~~ and ~~(16)(a)(ii)~~ ~~(17)(a)(ii)~~.

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~ ~~82-4-303(17)(a)(i)~~ and ~~(16)(a)(ii)~~ ~~(17)(a)(ii)~~ and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the

reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.”

Section 3. Section 82-4-335, MCA, is amended to read:

“82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of

those activities in the state without first obtaining an *a final* operating permit from the department. Except as provided in subsection (2), a separate, *final*, operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

- (b) the minerals expected to be mined;
- (c) a proposed reclamation plan;
- (d) the expected starting date of operations;
- (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;
- (f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;
- (g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;
- (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;
- (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;
- (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;
- (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;
- (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;
- (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;
- (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and
- (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 4. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision, or revision. (1) (a) The department shall review all applications for operating permits for completeness *and compliance with the requirements of this part and rules adopted pursuant to this part* within ~~60~~ 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial ~~completeness~~ notice must note all deficiency issues, and the department may not in a later

completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. ~~The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b).~~ The department shall notify the applicant concerning completeness *and compliance* as soon as possible. An application is considered complete *and compliant* unless the applicant is notified of any deficiencies within the appropriate review period.

~~(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application.~~

(b) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(c) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.

(d) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements; and

(iii) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(f) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(g) If the applicant is not notified of that there are deficiencies or inadequacies in the proposed reclamation plan and plan of operation application or that the application is compliant within the time period required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(e) (1)(h) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.

(e)(h) A Except as provided in (1)(g), a final permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(10); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7);

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

~~(d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.~~

~~(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.~~

~~(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.~~

~~(iv)(i) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.~~

~~(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.~~

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and, for a stipulation imposed in the final

permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(g)(iv).

(e) Upon submission of the bond and subject to subsection (1)(h), the department shall issue the final permit.

~~(2)~~*(3) The final operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.*

~~(3)~~*(4) The final operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:*

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the department has the authority to address them under the provisions of this part.

~~(4)~~~~(a)~~*(5) (a) The modification of an a final operating permit may be a major or minor permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a permit revision. A modification of the operating permit, including a modification necessary to conform to comply with the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.*

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed.

~~(b)~~~~The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.~~

~~(5)~~~~During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.~~

~~(6)~~~~Applications for major amendments must be processed in the same manner as applications for new permits.~~

~~(7)~~~~Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of~~

amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

~~(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.~~

Section 5. Section 82-4-342, MCA, is amended to read:

"82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for *a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit.* The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

~~(2) (a)(a) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for major and minor revisions and major and minor amendments and the procedures for processing minor revisions and minor amendments.~~

~~(b) An amendment must be considered minor if:~~

~~(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;~~

~~(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and~~

~~(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.~~

~~(b) An amendment must be considered minor if:~~

~~(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;~~

~~(ii) evidence is submitted showing that a local government has requested retention of the mine-~~

~~related facilities for a postmining use; and~~

~~(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.~~

(3) Applications for ~~major~~ major amendments must be processed pursuant to 82-4-337.

~~(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.~~

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

~~(5)(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:~~

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than ~~10~~ 25 acres or ~~5%~~ 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

~~(h)(i) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of if the change changes will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance~~ *the changes are consistent with subsection (5)(g); and*

~~(i)(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use."~~

Section 6. Section 82-4-353, MCA, is amended to read:

"82-4-353. Administrative remedies — notice — appeals — parties.

(1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3) All hearings and appeals under ~~82-4-337(3)~~ 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

Approved May 13, 2011

CHAPTER NO. 411

[SB 372]

AN ACT REDUCING THE TAXATION FOR A PORTION OF THE TAXABLE MARKET VALUE OF CLASS EIGHT BUSINESS EQUIPMENT OWNED BY A TAXPAYER; PROVIDING FUTURE TAX REDUCTIONS CONTINGENT ON INCREASES IN STATE COLLECTIONS OF INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX; CHANGING OTHER PROVISIONS RELATING TO TAXATION OF CLASS EIGHT PROPERTY; PROVIDING A REIMBURSEMENT TO LOCAL GOVERNMENTS AND TAX INCREMENT FINANCING DISTRICTS UNDER THE ENTITLEMENT SHARE PAYMENT, TO SCHOOL DISTRICTS THROUGH THE BLOCK GRANT PROGRAM, TO COUNTY SCHOOL RETIREMENT AND COUNTY TRANSPORTATION REIMBURSEMENT, AND TO THE MONTANA UNIVERSITY SYSTEM THROUGH SUPPORT OF PUBLIC EDUCATION INSTITUTIONS FOR THE LOSS OF CLASS EIGHT AND CLASS TWELVE PROPERTY TAX REVENUE; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-1-121, 15-6-138, 15-6-141, 15-10-420, 15-23-101, 17-7-502, 20-9-501, 20-9-630, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

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

“15-1-121. Entitlement share payment — purpose — appropriation.

(1) *As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government’s share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments. 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:*

(2) *The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:*

(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)(3) The total amount estimated pursuant to subsections (1) and (2)(a) received by each local government in fiscal year 2010 as an entitlement share payment under this section is the base component for the fiscal year 2011 distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base year component. The sum of all local governments' base year components is the base fiscal 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)(4) (a) The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3) (4). 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

Ch. 411	MONTANA SESSION LAWS 2011	1756
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
Broekton		\$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

Ch. 411	MONTANA SESSION LAWS 2011	1758
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)(i) 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)(ii) 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 *each* year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) (4)(a)(i) and (3)(a)(iii)(B) (4)(a)(ii):

(A)(i) for counties, 54%;

(B)(ii) for consolidated local governments, 62%; and

(C)(iii) 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)(5) 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) (8). 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) for which reimbursement is provided in this section.

~~(5)(6)~~ (a) The entitlement share pools calculated in this section, *the amounts determined under [section 3(2)] for local governments, and the block grants funding provided for in subsection (6) (8), and the amounts determined under [section 3(4)] for tax increment financing districts* 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~~ *Except for the distribution made under [section 3(2)(b)], 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~~ *prior fiscal* 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~~ *prior fiscal* 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~~ *prior fiscal* 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~~ before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

~~(6)(8)~~ (a) ~~If Except for a tax increment financing district entitled to a reimbursement under [section 3(4)], 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 funding. If a tax increment financing district referred to in subsection (6)(b) (8)(b) terminates, then the block grant funding for the district provided for in subsection (6)(b) (8)(b) terminates.~~

(b) ~~One-half~~ Except for the reimbursement made under [section 3(4)(b)], one-half of the payments provided for in this subsection ~~(6)(b) (8)(b)~~ must be made by November 30 and the other half by May 31 of each year. Subject to subsection ~~(6)(a) (8)(a)~~, the entitlement share for tax increment financing districts is as follows:

Caseade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148 \$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	1,100,507 250,279
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

~~(7)(9)~~ The estimated base fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, 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)(e) 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)(10)~~ A three-fifths vote of each house of the legislature is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through ~~(3)~~ (4).

~~(10)(11)~~ When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(11)(12)~~ A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(12)(13)~~ A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 2. Section 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) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, 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, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) 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 or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(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 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.
 - (b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.
 - (c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.
- (3) Except as provided in 15-24-1402, ~~and~~ 15-24-2101, *and subsection (4) of this section* class eight property is taxed at:
- (a) *as determined pursuant to subsection (4):*
 - (i) *for the first \$2 million of taxable market value, 2%; or*
 - (ii) *for the first \$3 million of taxable market value, 1.5%; and*
 - (b) *for all taxable market value in excess of the applicable amount of taxable market value in subsection (3)(a), 3% of its market value.*
- (4) (a) *The adjusted taxable market value and rate in subsection (3)(a)(i) apply for class eight property unless in any year beginning with fiscal year 2013 the revenue collected from individual income tax and corporation income tax exceeds the revenue collected from individual income tax and corporation income tax in the previous fiscal year by more than 4%. In that case, for tax years beginning after the next December 31, the taxable market value and rate in subsection (3)(a)(ii) apply.*
- (b) *For the purpose of making the determination required in subsection (4)(a), the department of administration shall certify to the secretary of state, by August 1 of each year in which class eight property is not taxed pursuant to subsection (3)(a)(ii), the amount of unaudited individual income tax and corporation income tax revenue in the prior fiscal year as recorded when that fiscal year statewide accounting, budgeting, and human resource system records are closed in July.*
- (4)(5) 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.
- (5)(6) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

Section 3. Reimbursement for class eight rate reduction and exemption — distribution — appropriations. (1) For the tax rate reductions in 15-6-138 and for the effective tax rate reductions on property under 15-6-145 because of the rate reductions required by the amendment of 15-6-138 in [section 2], the department shall, by June 1, 2012, and for each calendar year that the tax rate is adjusted under 15-6-138(4), estimate for each local government, as defined in 15-1-121(5), each school district, the county retirement fund under 20-9-501, the countywide school transportation reimbursement under 20-10-146, each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-108, the difference between property tax collections under 15-6-138, as amended by [section 2], and under 15-6-145 and the property tax revenue that would have been collected under 15-6-138 and 15-6-145 if 15-6-138 had not been amended by [section 2]. The difference is the annual reimbursable amount for each local government, each school district, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-108.

(2) (a) The department shall distribute the reimbursement to local governments with the entitlement share payments under 15-1-121(7) for fiscal year 2012 and for all other fiscal years in which rate reductions occur. Local government reimbursements for subsequent years are made pursuant to the entitlement share recomputation as provided in 15-1-121(6).

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each local government. By August 1 following each of those fiscal years, the department shall distribute the amount determined under this subsection (2)(b) for local governments as provided in 15-1-121(6)(a).

(3) (a) The office of public instruction shall distribute the reimbursement to school districts with the block grants pursuant to 20-9-630 for fiscal year 2012 and all other fiscal years in which rate reductions occur. School district reimbursements for subsequent fiscal years are made pursuant to 20-9-630.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each school district. By November 30 following each of those fiscal years, the office of public instruction shall distribute the amount determined under this subsection (3)(b) in the same manner as the block grant is distributed by fund under 20-9-630.

(c) The amounts determined under this subsection (3) are statutorily appropriated, as provided in 17-7-502, from the general fund to the office of public instruction for distribution to school districts.

(4) (a) For each fiscal year beginning after fiscal year 2012 and all other fiscal years in which rate reductions occur, the amount determined under subsection (1) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in 15-1-121(8)(b) if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under 15-1-121(8)(b), the reimbursement must be made to that tax increment financing district at the same time as other districts.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under

subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each tax increment financing district. By August 1 following each of those fiscal years, the department shall distribute the amount determined under this subsection (4)(b) to each tax increment financing district as provided in 15-1-121(8) and to any other tax increment financing district that is entitled to a reimbursement under this section.

(5) (a) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the amount determined under subsection (1) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in 15-10-108.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for the 6-mill university levy. By August 1 following each of those fiscal years, the department of administration shall transfer the amount determined under this subsection (5)(b) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(c) Beginning in fiscal year 2013, the department of administration shall transfer the amounts determined under this subsection (5) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(6) (a) The office of public instruction shall distribute the reimbursement to the countywide retirement fund under 20-9-501 for fiscal year 2012 and all other fiscal years in which rate reductions occur. One-half of the amount must be distributed in November and the remainder in May.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30 following each of those fiscal years, the office of public instruction shall distribute the amount determined under this subsection (6)(b) to the countywide retirement fund.

(c) The amounts determined under this subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the office of public instruction for distribution to the countywide retirement account.

(7) (a) The office of public instruction shall distribute the reimbursement to the county transportation reimbursement under 20-10-146 for fiscal year 2012 and all other fiscal years in which rate reductions occur. The reimbursement must be made at the same time as countywide school transportation block grants are distributed under 20-9-632.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30 following each of those fiscal years, the office of public instruction shall distribute the amount determined under this subsection (7)(b) to the county transportation reimbursement.

(c) The amounts determined under this subsection (7) are statutorily appropriated, as provided in 17-7-502, from the general fund to the office of public instruction for distribution to the county transportation reimbursement.

Section 4. Section 15-6-141, MCA, is amended to read:

“15-6-141. Class nine property — description — taxable percentage.

(1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities and biomass generation facilities classified under 15-6-157, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), “property used for the sole purpose” does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138~~(5)~~(6); and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value.”

Section 5. 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)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) 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) a mill levy imposed for a newly created regional resource authority.

(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:

(a) may increase the number of mills to account for a decrease in reimbursements; *and*

(b) *may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).*

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, 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 tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a 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;

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

(v) a levy for the support of a newly established regional resource authority;

or

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703.

(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 6. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

- (c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);
- (d) natural gas distribution utilities;
- (e) the gas gathering facilities specified in 15-6-138~~(5)~~(6);
- (f) canals, ditches, flumes, or like properties; and
- (g) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;
 - (3) all property of scheduled airlines;
 - (4) the net proceeds of mines, except bentonite mines;
 - (5) the gross proceeds of coal mines; and
 - (6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12.”

Section 7. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; [section 3]; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.

10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 8. 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;

(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; and

(v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from state fiscal

stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(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) 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.

(v) *property tax reimbursements made pursuant to [section 3(6)]*;

~~(vi)~~(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid;

(b) notwithstanding the provisions of subsection (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 9. Section 20-9-630, MCA, is amended to read:

“20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on:

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999; and

(ii) *any reimbursement to be made to a school district pursuant to subsection (2).*

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district’s budget as an anticipated revenue source by fund.

~~(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.~~

~~(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.~~

(2) *If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. The total of reimbursement distributions made pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year. The block grant percentage increases in subsections (4)(a) through (4)(c) do not apply to reimbursements made under this subsection for the fiscal year of the first reimbursement but do apply to the block grant amounts in subsequent fiscal years that incorporate reimbursements added in previous fiscal years. For the purpose of this subsection, the fiscal year of the first reimbursement does not include the fiscal year in which the reimbursement under [section 3(3)(b)] is made.*

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the ~~average~~ amount received in ~~fiscal years 2002 and 2003~~ year 2012, *except for the amount received under [section 3(3)(b)],* by the district general fund from the block grants provided for in ~~subsection subsections~~ subsections (1) and (2). ~~The~~ *Except as provided in subsection (2),* the block grant must be increased by 0.76% in fiscal year ~~2004~~ 2013 and in each succeeding fiscal year.

(b) The block grant for the district transportation fund is ~~equal to one-half of the average~~ amount received in ~~fiscal years 2002 and 2003~~ year 2012, *except for the amount received under [section 3(3)(b)],* by the district transportation fund from the block grants provided for in ~~subsection subsections~~ subsections (1) and (2). ~~The~~ *Except as provided in subsection (2),* the block grant must be increased by 0.76% in fiscal year ~~2004~~ 2013 and in each succeeding fiscal year.

(c) (i) The combined fund block grant is equal to the ~~average~~ amount received in ~~fiscal years 2002 and 2003~~ year 2012, *except for the amount received under [section 3(3)(b)],* by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in ~~subsection subsections~~ subsections (1) and (2). ~~The~~ *Except as provided in subsection (2),* the block grant must be increased by 0.76% in fiscal year ~~2004~~ 2013 and in each succeeding fiscal year.

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district."

Section 10. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the

county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under 20-9-632;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) *property tax reimbursements made pursuant to [section 3(7)]; and*

~~(viii)~~(ix) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.”

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 3].

Section 13. Coordination instruction. If both Senate Bill No. 329 and [this act] are passed and approved and if both contain a section that amends 20-9-630, then the sections amending 20-9-630 are void and 20-9-630 must be amended as follows:

“20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on:

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999; and

(ii) *any reimbursement to be made to a school district pursuant to subsection (2).*

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

~~(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.~~

~~(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.~~

(2) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. Except for the reimbursement made under [section 3(3)(b) of Senate Bill No. 372], the total of reimbursement distributions made pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the ~~average~~ amount received in fiscal years ~~2002 and 2003~~ *year 2011* by the district general fund from the block grants provided for in subsection (1) *and the amount received by the district general fund under subsection (2), except the amount received under [section 3(3)(b) of Senate Bill No. 372].* ~~The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(b) The block grant for the district transportation fund is equal to ~~one-half of the average~~ amount received in fiscal years ~~2002 and 2003~~ *year 2011* by the district transportation fund from the block grants provided for in subsection (1) *and the amount received by the district transportation fund under subsection (2), except the amount received under [section 3(3)(b) of Senate Bill No. 372].* ~~The~~

~~block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(c) (i) ~~The combined fund block grant is equal to the average amount received in fiscal years 2002 and 2003 by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year~~ *year 2011 and the amount received under subsection (2), except the amount received under [section 3(3)(b) of Senate Bill No. 372].*

(ii) ~~The school district may deposit the combined fund block grant into any budgeted fund of the district.~~

Section 14. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved, then:

(1) the general fund appropriation for BASE aid in House Bill No. 2 of \$526,495,288 is decreased by \$1,803,873 in fiscal year 2013;

(2) the general fund appropriation for HB 124 Block Grants in House Bill No. 2 of \$52,150,510 is increased by \$6,444,852 in fiscal year 2013; and

(3) [section 3(3)(c), (6)(c), and (7)(c) and section 7 of this act] are void.

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Effective date. [This act] is effective July 1, 2011.

Section 17. Applicability. [This act] applies to tax years beginning after December 31, 2011.

Section 18. Termination. [Section 3(3)(c), (6)(c), and (7)(c) and section 7] terminate June 30, 2013.

Approved May 13, 2011

CHAPTER NO. 412

[SB 29]

AN ACT GENERALLY PROVIDING FOR THE TRAINING OF PERSONS SELLING OR SERVING ALCOHOLIC BEVERAGES; PROVIDING A PENALTY; REQUIRING CONSIDERATION OF MITIGATING CIRCUMSTANCES; PROVIDING FOR RULEMAKING; AND PROVIDING THAT THE DEPARTMENT OF REVENUE HAS SOLE JURISDICTION FOR THE TRAINING PROGRAM.

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

Section 1. Short title. [Sections 1 through 9] may be cited as the "Responsible Alcohol Sales and Service Act".

Section 2. Legislative intent. It is the intent of [sections 1 through 9] that retail establishments and manufacturers licensed to sell or serve alcoholic beverages to the public ensure that all licensees and their employees that sell or serve alcoholic beverages are appropriately trained to comply with state law prohibiting the sale or service of alcoholic beverages to persons under 21 years of age and to persons who are intoxicated. [Sections 1 through 9] do not apply to special permits issued under 16-4-301.

Section 3. Definition. As used in [sections 1 through 9], "licensee" means a person or entity licensed by the department to sell alcoholic beverages at retail for either on-premises or off-premises consumption.

Section 4. Notification — violation — penalty. (1) A licensee shall certify annually on its license renewal form that the licensee is in compliance with the provisions of [sections 1 through 9].

(2) A license renewal form that falsely includes information that the licensee and all employees have been trained pursuant to [sections 1 through 9] is a violation of this code.

(3) If, after an investigation under 16-4-406, a licensee is determined to have violated subsection (2), the licensee must be assessed an administrative penalty under 16-4-406 or the penalty for false swearing under 45-7-202.

Section 5. Licensees required to ensure training. A licensee shall:

(1) require each employee who is authorized to sell or serve alcoholic beverages in the normal course of employment and the employee's immediate supervisor to successfully complete training to ensure compliance with state law regarding the sale and service of alcoholic beverages. The training must be completed within 60 days of the employee's date of hire and every 3 years after the employee's initial training.

(2) maintain employment records verifying employee completion of the training required in subsection (1).

Section 6. Responsible server and sales training program. (1) The department shall certify all server and sales training programs that include the following:

- (a) effects of alcohol on the human body;
- (b) information, including criminal, civil, and administrative penalties, related to 27-1-710 and this code;
- (c) procedures for checking identification;
- (d) procedures for gathering proper documentation that may affect the licensee's liability;
- (e) training for skills to handle difficult situations and to learn evaluation techniques regarding intoxicated persons or others that pose potential liability;
- (f) a final test; and
- (g) a certificate of completion, which must be provided to participants who pass the final test.

(2) The department may not provide a responsible server and sales training program.

Section 7. Jurisdiction. The implementation and enforcement of any mandatory server and sales training programs in this state is under the exclusive authority and jurisdiction of the department.

Section 8. Penalty. (1) A licensee found as a result of a routine check for compliance with 16-3-301, 16-6-304, or 16-6-305 to be out of compliance with [section 5] shall pay a \$50 penalty for a first offense, a \$200 penalty for a second offense, and a \$350 penalty for a third offense in a 3-year period. The fine must be paid to the department and deposited in the enterprise fund to the credit of the department for administration of [sections 1 through 9].

(2) The department shall consider the following as mitigating circumstances before taking an action pursuant to 16-4-406 against a licensee who is not in compliance with the provisions of [sections 1 through 9]:

- (a) the licensee's prior violation history;
- (b) the licensee's good faith effort to prevent a violation;
- (c) the existence of written policies governing employee conduct; and

(d) whether the evidence of a violation was based solely on the investigating authority creating an opportunity for the violation rather than on complaints received or observed misconduct.

Section 9. Rulemaking. The department shall adopt rules to implement the provisions of [sections 1 through 9].

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1 through 9].

Approved May 14, 2011

CHAPTER NO. 413

[SB 100]

AN ACT PROVIDING FOR DISPOSITION OF COMPENSATORY DAMAGES AND INTEREST FROM ANY FUTURE LITIGATION RESULTING FROM THE WRONGFUL USE OR OCCUPATION OF STATE LANDS; CLARIFYING LEGISLATIVE APPROPRIATION AUTHORITY; AMENDING SECTION 77-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 77-1-117, MCA, is amended to read:

“77-1-117. Disposition of fines and judgment proceeds. (1) Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, except money received by a justice’s court, must be paid to the department of revenue for deposit in the general fund.

(2) *Unless otherwise provided, all money, including interest, awarded by a court as compensatory damages under this title or any of the land laws of this state for the wrongful use or occupation of state lands must be deposited in the account or fund in which the money would have been deposited had the party assessed with the damages complied with the land laws of this state and may be paid out of the account or fund only through an appropriation by the legislature.”*

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

Section 3. Applicability. [This act] applies to court proceedings commenced after [the effective date of this act].

Approved May 13, 2011

CHAPTER NO. 414

[SB 108]

AN ACT REQUIRING CONSULTATION AND COORDINATION WITH CERTAIN COUNTY AND TRIBAL GOVERNMENTS IN PROPOSED STATE AND FEDERAL POLICY DECISIONS REGARDING LARGE PREDATORS AND LARGE GAME SPECIES; AMENDING SECTION 87-1-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-217, MCA, is amended to read:

“87-1-217. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

- (a) protect humans, livestock, and pets;
 - (b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and
 - (c) preserve citizens’ opportunities to hunt large game species.
- (2) As used in this section:
- (a) “large game species” means deer, elk, mountain sheep, moose, antelope, and mountain goats; and
 - (b) “large predators” means bears, mountain lions, and wolves.
- (3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(4) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock, ~~so long as if~~ the state objective for breeding pairs has been met. For the purposes of this subsection, “problem wolves” means any individual wolf or pack of wolves with a history of livestock predation.

(5) *The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.”*

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

Approved May 14, 2011

CHAPTER NO. 415

[SB 136]

AN ACT REVISING RESIDENCY REQUIREMENTS FOR HUNTING LICENSES; AMENDING SECTIONS 87-1-290, 87-2-514, AND 87-2-515, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-1-290, MCA, is amended to read:

“87-1-290. (Effective March 1, 2011) Hunting access account. (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account may be used only for the purpose of funding any hunting access program established by law or by the department through administrative rule.

(2) The following funds must be deposited in the account:

(a) 25% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505(1)(c) and 25% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510(1)(b);

(b) 25% of the fee for hunting licenses issued to nonresident ~~children~~ *relatives* of a resident pursuant to 87-2-514; and

(c) the hunting access enhancement fees assessed pursuant to 87-2-202(3)(c) and (3)(d).

(3) Any interest or income earned on the account must be deposited in the account.”

Section 2. Section 87-2-514, MCA, is amended to read:

“87-2-514. Nonresident child relative of resident allowed to purchase nonresident licenses at reduced cost — definitions. (1) *For the purposes of this section, the following definitions apply:*

(a) *“Nonresident relative of a resident” means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.*

(b) *“Resident” means a resident as defined in 87-2-102.*

(2) 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 nonresident relative of a resident, as defined in 87-2-102, and~~ who meets the qualifications of subsection ~~(3)~~ (5) may purchase:

(a) a Class B nonresident fishing license;

(b) a Class B-1 nonresident upland game bird license; ~~and;~~

(c) a Class B-7 nonresident deer A tag; *and*

(d) ~~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.

(3) This section does not allow a nonresident ~~child relative of a resident to purchase nonresident combination licenses at a reduced price.~~

~~(2)(4)~~ The fee for a nonresident license purchased pursuant to subsection ~~(1)~~ (2) is ~~twice~~ *four times* the amount charged for an equivalent resident license. The nonresident ~~child relative of a resident~~ 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 relative of a resident~~ purchases a hunting license.

~~(3)(5)~~ To qualify for a license pursuant to subsection ~~(1)~~ (2), a nonresident ~~child relative 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 *or documentation that the applicant was born to parents who were residents at the time of birth;*

~~(b) a high school diploma from a Montana public, private, or home school or certified verification that the applicant has passed the general educational development test in Montana~~

(b) *evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety course in Montana pursuant to 87-2-105; and*

(c) ~~proof that the applicant has a natural or adoptive parent who is a current Montana resident, as defined in 87-2-102 is a nonresident relative of a resident.~~

~~(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 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 3. Section 87-2-515, MCA, is amended to read:

“87-2-515. Class B-15 nonresident child’s elk license. (1) Except as otherwise provided in this chapter, a nonresident ~~child~~ *relative* of a resident who is qualified to purchase licenses pursuant to 87-2-514 may purchase a Class B-15 nonresident ~~child’s~~ elk license for ~~twice~~ *four times* the amount charged for a resident Class A-5 elk tag.

(2) A Class B-15 license entitles the holder to hunt elk in areas designated by the commission, at the times and upon the terms set forth by the commission, and to possess the carcass of an elk authorized by the license as set forth in department rules.”

Section 4. Effective date. [This act] is effective March 1, 2012.

Approved May 13, 2011

CHAPTER NO. 416

[SB 143]

AN ACT REVISING MONTANA GRIZZLY BEAR POLICY TO AVOID CONFLICTS WITH HUMANS AND LIVESTOCK; AMENDING SECTION 87-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-5-301, MCA, is amended to read:

“87-5-301. Policy toward grizzly Grizzly bear — findings — policy. (1) *The legislature finds that:*

(a) *grizzly bears are a recovered population and thrive under responsive cooperative management;*

(b) *grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and*

(c) *successful conflict management is key to maintaining public support for conservation of the grizzly bear.*

(2) ~~It is hereby declared the policy of the state of Montana to: protect, conserve, and~~

(a) *manage the grizzly bear as a rare species of Montana wildlife to avoid conflicts with humans and livestock; and*

(b) *use proactive management to control grizzly bear distribution and prevent conflicts, including trapping and lethal measures.”*

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

Approved May 14, 2011

CHAPTER NO. 417

[SB 277]

AN ACT CLARIFYING THAT THE BEEF CHECK-OFF IS TO BE PAID ONLY ON CATTLE SOLD; LIMITING THE FEE CHARGEABLE BY THE DEPARTMENT OF LIVESTOCK FOR COLLECTING THE NATIONAL BEEF CHECK-OFF; REQUIRING THE LEGISLATIVE AUDITOR TO AUDIT THE

DEPARTMENT OF LIVESTOCK'S DIRECT COSTS FOR COLLECTING THE BEEF CHECK-OFF; AMENDING SECTIONS 81-1-102, 81-8-901, AND 81-8-902, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 81-1-102, MCA, is amended to read:

"81-1-102. Duties and powers of department — fees based on costs.

(1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that, in the judgment of the department, fosters ~~this~~ *the livestock* industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) ~~The~~ *Except as provided in 81-8-901, the* department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

(3) The department shall perform the duties assigned to the department relating to the administration and regulation of alternative livestock ranches."

Section 2. Section 81-8-901, MCA, is amended to read:

"81-8-901. Beef promotion and marketing — powers and duties of department — contract. (1) The department shall:

~~(1)(a) cooperate and enter into a contract with the Montana beef council for collecting to collect on behalf of the beef council an assessment of \$1 for each head of Montana livestock cattle sold as established in the national Beef Promotion and Research Act of 1985, 7 U.S.C. 2901 through 2911, also referred to as the national beef check-off, and 7 CFR, part 1260, subpart A;~~

(b) *adopt rules necessary for the administration of this section.*

(2) (a) ~~Any~~ *Except as provided in subsection (2)(b), the* contract agreed to under this section between the department and the Montana beef council must include a provision that the beef council shall pay a fee, not to exceed 5% of the total check-off funds collected, to reimburse the department for all expenses directly incurred through the collection of the check-off activities as verified by the legislative auditor.

(b) *The department is not obligated under this section or any other state law to contract for collection of the fee if the department's direct collection costs as verified by the legislative auditor exceed 5% of the check-off funds collected.*

~~(2) adopt rules necessary for the administration of this section."~~

Section 3. Section 81-8-902, MCA, is amended to read:

"81-8-902. Department not liable for collection of assessment — inspection. (1) The department and its agents and employees are not responsible or liable for the collection or payment of money a livestock owner's compliance with the requirement to pay the assessment due to the Montana beef council pursuant to 81-8-901(1) if 81-8-901 and this section are carried out in good faith.

(2) The department may not refuse to inspect livestock if the livestock owner refuses to pay the assessment imposed under 81-8-901(1)."

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 14, 2011

CHAPTER NO. 418

[SB 329]

AN ACT GENERALLY REVISING K-12 EDUCATION LAWS; CREATING THE PATHWAY TO EXCELLENCE PROGRAM; AMENDING THE STRUCTURE OF ESTIMATING AND ALLOCATING OIL AND NATURAL GAS PRODUCTION TAXES FOR SCHOOLS; CHANGING THE MONTANA VIRTUAL ACADEMY TO THE MONTANA DIGITAL ACADEMY; LIMITING A SCHOOL DISTRICT'S FUND BALANCE REAPPROPRIATED TO A PERCENTAGE OF THE MAXIMUM GENERAL FUND BUDGET; ALLOWING A SCHOOL DISTRICT A ONE-TIME TRANSFER OF GENERAL FUND MONEY; PROVIDING AN INFLATIONARY INCREASE TO THE BASIC ENTITLEMENT AND TOTAL PER-ANB ENTITLEMENT; CREATING A STATE SCHOOL OIL AND NATURAL GAS IMPACT ACCOUNT; CREATING A COUNTY SCHOOL OIL AND NATURAL GAS IMPACT FUND; ALLOWING FOR MULTIDISTRICT AGREEMENTS; DEFINING "MULTIDISTRICT COOPERATIVE"; ALLOWING TRUSTEES TO DECIDE THE DISPOSITION OF INACTIVE TUITION FUNDS; EXEMPTING PARTICIPANTS IN A COOPERATIVE PURCHASING GROUP FROM CERTAIN COMPETITIVE BIDDING REQUIREMENTS; ALLOWING THE TRANSFER OF FUNDS RAISED BY A VOTED OR PERMISSIVE LEVY IF VOTERS APPROVE THE TRANSFER IN AN ELECTION; ALLOWING TRUSTEES TO IMPOSE AN OVER-BASE LEVY IN SUPPORT OF A DISTRICT'S GENERAL FUND BUDGET IN AN AMOUNT NOT TO EXCEED REVENUE AMOUNTS PREVIOUSLY AUTHORIZED BY THE VOTERS IN THE PREVIOUS 5 YEARS; ELIMINATING THE PERCENTAGE OF GROWTH FOR SCHOOL DISTRICT BLOCK GRANTS; REVISING THE USE OF THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; PROVIDING RULEMAKING AUTHORITY; REMOVING THE REQUIREMENT THAT TRUSTEES SUBMIT TO ELECTORS THE PROPOSITION OF TRANSFERRING BUS DEPRECIATION RESERVE FUNDS TO ANOTHER FUND; REQUIRING A SCHOOL DISTRICT TO REPORT BUDGET AMENDMENTS TO THE LEGISLATURE AND THE BOARD OF PUBLIC EDUCATION; LIMITING A SCHOOL DISTRICT'S ENDING FUND BALANCE TO A SPECIFIC PERCENTAGE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-36-332, 20-3-363, 20-7-102, 20-7-1201, 20-9-104, 20-9-161, 20-9-201, 20-9-204, 20-9-208, 20-9-306, 20-9-308, 20-9-353, 20-9-507, 20-9-516, 20-9-630, AND 20-10-147, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

Section 1. Section 15-36-332, MCA, is amended to read:

"15-36-332. Distribution of taxes to taxing units — appropriation.

(1) (a) ~~By Subject to [section 8],~~ by the dates referred to in subsection (6) of this section, the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection (8) of this section.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school

retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d) *and subject to the provisions of [section 8]*.

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas *production* taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) ~~(a)~~ Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund *as provided in [section 8]*.

~~(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.~~

(6) ~~The~~ *Subject to [section 8],* the department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed

under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(9) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.”

Section 2. Section 20-3-363, MCA, is amended to read:

“20-3-363. Interdistrict Multidistrict agreements — fund transfers.

(1) ~~The boards of trustees of any two or more school districts that have unified pursuant to 20-6-312, any two school districts that have created a joint board of trustees pursuant to 20-3-361, or a high school district and any elementary school district associated with that high school district may enter into an interdistrict~~ *a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and to provide for the joint funding and operation and maintenance of both all participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must be approved by the board boards of trustees of both all participating districts by February 1 April 1 of the current fiscal year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies.*

(2) All expenditures in support of the ~~interdistrict multidistrict~~ *agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each participating district of the multidistrict cooperative may transfer funds into the interlocal cooperative fund from the general fund or any other budgeted fund of the district. Transfers to the interlocal cooperative fund from each participating school district district’s general fund are limited to an amount not to exceed the direct state aid in support of the respective school district’s general fund. and All transfers must be completed by February 1 April 1 of the current fiscal year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies.*

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the ~~general budgeted~~ *fund from which the transfer was made.*

(4) *The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.*

(5) *As used in this title, “multidistrict cooperative” means a public entity created by two or more school districts executing a multidistrict agreement under this section or any school district or other public entity participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either a coordinating or a cooperating agency.”*

Section 3. Montana pathway to excellence program — purpose. (1) [Sections 3 and 4] may be known as the pathway to excellence program.

(2) The purpose of the pathway to excellence program is to promote educational excellence in Montana's public schools through data-driven decisionmaking.

(3) It is the intent of the program that Montana K-12 public education remain focused on continuous improvement and increased academic achievement for students in public schools.

Section 4. Transparency and public availability of public school performance data — reporting. (1) The office of public instruction shall develop a publicly available data system that displays an educational data profile for each school district.

(2) Each school district's educational profile must include, at a minimum, the following elements:

(a) school district contact information and links to district websites, when available;

(b) state criterion-referenced testing results;

(c) program and course offerings;

(d) student enrollment and demographics by grade level; and

(e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

(a) the number and type of employee positions, including administrators;

(b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually enhance the statewide data system to support the collection of data from schools, implement a data collection plan to reduce redundant data requests, increase data use from the centralized system by various functions within the office of public instruction, and promote transparency in reporting to schools, school districts, communities, and the public. Actionable data analysis must be produced to promote academic improvement.

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:

- (a) statewide student identifier;
- (b) student-level enrollment data, including average daily attendance;
- (c) student-level statewide assessment data;
- (d) information on untested students;
- (e) student-level graduation and dropout data;
- (f) ability to match student-level K-12 and higher education data;
- (g) a statewide data audit system;
- (h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;
- (i) student-level course completion data, including transcripts, to assess career and college readiness; and
- (j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.

(8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.

(9) On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education.

Section 5. Section 20-7-102, MCA, is amended to read:

“20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306(14)(e)(ii)(14)(a)(iii)(B)."

Section 6. Section 20-7-1201, MCA, is amended to read:

"20-7-1201. Montana virtual digital academy — purposes — governance. (1) There is a Montana virtual digital academy at a unit of the Montana university system.

(2) The purposes of the Montana virtual digital academy are to:

(a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;

(b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and

(c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana virtual digital academy must be governed by a board with equal representation from:

(a) the commissioner of higher education or a designee;

(b) the superintendent of public instruction or a designee;

(c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;

(d) a Montana-licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement policies and guidelines for the Montana virtual digital academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program."

Section 7. Section 20-9-104, MCA, is amended to read:

“20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections ~~(5) and (6)~~ (7) and (8), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection ~~(5)~~ (7) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b): *up to an amount not exceeding 15% of a school district's maximum general fund budget.*

(5) *For fiscal year 2012, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state to be deposited in the state general fund.*

(6) *Beginning in fiscal year 2013, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:*

(a) *70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622;*

(b) *5% of the excess amount must be remitted to the state to be deposited in the state school oil and natural gas impact account provided for in [section 9]; and*

(c) *25% of the excess amount must be deposited in the county school oil and natural gas impact fund provided for in [section 10].*

~~(5)~~(7) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

~~(6)~~(8) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(9) *Prior to June 30, 2011, a school district may transfer any general fund money in excess of 15% of the fiscal year 2011 general fund budget that is not needed to fund the budget to any budgeted fund considered appropriate by the trustees.”*

Section 8. Oil and natural gas production taxes for school districts — allocation and limits. (1) The maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section.

(4) For fiscal year 2012, any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) must be deposited in the guarantee account as provided in 20-9-622.

(5) Subject to the limitation in subsection (1), the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

(a) for fiscal year 2012, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) for fiscal year 2013, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 35% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(c) for fiscal year 2014, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 45% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(d) for each succeeding fiscal year, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 55% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(e) oil and natural gas production taxes received by the district must be deposited in the general fund until the budgeted amount is reached; and

(f) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

(7) Beginning in fiscal year 2013, for any amount retained by the department of revenue in compliance with the limitation in subsection (1), the amount retained must be allocated as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in [section 9]; and

(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in [section 10].

Section 9. State school oil and natural gas impact account. (1) There is a state school oil and natural gas impact account in the state special revenue

fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas production taxes under 15-36-331 but are impacted by contiguous counties that are benefiting from receipt of oil and natural gas production taxes.

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to [section 8(3)] and any amounts pursuant to [section 7].

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-314;

(b) a district's need to hire new teachers or staff as a result of increased enrollment;

(c) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(d) major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection

(3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed \$7.5 million. Any amount over \$7.5 million must be deposited in the state general fund.

Section 10. County school oil and natural gas impact fund. (1) The governing body of a county receiving an allocation under [section 7] and [section 8(3)] shall establish a county school oil and natural gas impact fund.

(2) Money received by a county pursuant to [section 7] and [section 8(3)] must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is 30% or less of the amount of the average received by the district in the previous 4 fiscal years;

(b) the average price of oil is \$50 a barrel or less for the fiscal year; or

(c) the production of oil in the county drops 50% or more below the average oil production in the county during the immediately preceding 5-year period.

(3) Within 30 days of any of the circumstances described in subsections (2)(a) through (2)(c) occurring, the governing body of the county shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county.

(4) The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil described in subsection (2)(b);

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by the changes in oil and natural gas activity described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in oil and natural gas activity described in subsection (2).

(5) Except as provided in subsection (4)(b), money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(6) Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund.

Section 11. Section 20-9-161, MCA, is amended to read:

“20-9-161. Definition of budget amendment for budgeting purposes.

As used in this title, unless the context clearly indicates otherwise, the term “budget amendment” for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district’s budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting:

(a) the safety of the students and district employees; or

(b) the educational functions of the district. *Any budget amendment adopted pursuant to this subsection (6)(b) that in combination with other budget amendments within the same school fiscal year exceeds 10% of the district’s adopted general fund budget must be reported by the school district to the education and local government interim committee and the board of public education with an explanation of why the budget amendment is necessary.”*

Section 12. Section 20-9-201, MCA, is amended to read:

“20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, “fund” means a separate detailed

account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A “budgeted fund” means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A “nonbudgeted fund” means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) ~~(a) Except as provided in subsection (3)(b) or as otherwise provided by law, whenever~~ *Except as otherwise provided by law, whenever* the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

~~(b) If the trustees of a district determine that its tuition fund is inactive and will no longer be used, the trustees shall close the fund by transferring any cash and account balances to the district’s miscellaneous programs fund if the tuition fund does not have a cash or fund balance deficit.”~~

Section 13. Section 20-9-204, MCA, is amended to read:

“20-9-204. Conflicts of interests, letting contracts, and calling for bids — exceptions. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee’s own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

(2) For the purposes of subsection (1):

(a) “contract” does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not

reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and

(b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (7) (6) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds \$50,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement *for bids under this subsection (3)(b)* must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. ~~The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.~~ *A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection (3) if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list.*

~~(5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected.~~

(6)(5) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(7)(6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract.”

Section 14. Section 20-9-208, MCA, is amended to read:

“20-9-208. Transfers among appropriation items of fund — transfers from fund to fund. (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district or between the final budget and a budget amendment under one of the following circumstances:

(a) (i) Except as provided in subsection (2)(a)(ii), transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless:

(A) the transfer is within or directly related to the purposes for which the funds were raised. ~~Before a transfer can occur, the trustees shall and the trustees~~ hold a properly noticed hearing to accept public comment on the transfer; or

(B) *the transfer is approved by the qualified electors of the district in an election called for the purpose of approving the transfer, in which case the funds may be spent for the purpose approved on the ballot.*

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by state or federal law unless the transfer is in compliance with any restrictions or conditions imposed by state or federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district.

(4) *The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a*

nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred."

Section 15. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) (a) "Basic entitlement" means:

~~(a)(i)~~ for each high school district:

~~(i)(A) \$246,085~~ \$256,003 for fiscal year ~~2010~~ 2012; and

~~(ii)(B) \$253,468 for each succeeding fiscal year; \$262,224 for fiscal year 2013;~~
and

~~(C) except as provided in subsection (6)(b), \$260,099 for each succeeding fiscal year;~~

~~(b)(ii)~~ for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

~~(i)(A) \$22,141~~ \$23,033 for fiscal year ~~2010~~ 2012;

~~(ii)(B) \$22,805 for each succeeding fiscal year; and \$23,593 for fiscal year 2013; and~~

~~(C) except as provided in subsection (6)(b), \$23,402 for each succeeding fiscal year;~~

(e)(iii) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i)(A) for kindergarten through grade 6 elementary program:

(A)(I) ~~\$22,141~~ *\$23,033* for fiscal year ~~2010~~ *2012*; and

(B)(II) ~~\$22,805~~ *for each succeeding fiscal year; plus \$23,593 for fiscal year 2013; and*

(III) *except as provided in subsection (6)(b), \$23,402 for each succeeding fiscal year; plus*

(ii)(B) for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

(A)(I) ~~\$62,704~~ *\$65,231* for fiscal year ~~2010~~ *2012*; and

(B)(II) ~~\$64,585~~ *for each succeeding fiscal year. \$66,816 for fiscal year 2013; and*

(III) *except as provided in subsection (6)(b), \$66,275 for each succeeding fiscal year.*

(b) *If fiscal year 2012 general fund revenue, including transfers in, reflected in the audited comprehensive annual financial report exceeds \$1,766,500,000, then the entitlements for fiscal year 2013 in this subsection (6) are the amounts to be paid for succeeding fiscal years.*

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying \$20.40 times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(14) (a) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a)(i) for a high school district or a K-12 district high school program, a maximum rate of ~~\$6,097~~ *\$6,343* for fiscal year ~~2010~~ *2012*, and ~~\$6,280~~ *\$6,497* for fiscal year *2013*, and except as provided in subsection (14)(b), *\$6,444* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b)(ii) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~\$4,763~~ *\$4,955* for fiscal year ~~2010~~ *2012*, and ~~\$4,906~~ *\$5,075* for fiscal year *2013*, and except as provided in subsection (14)(b), *\$5,034* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c)(iii) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i)(A) a maximum rate of ~~\$4,763~~ *\$4,955* for fiscal year ~~2010~~ *2012*, and ~~\$4,906~~ *\$5,075* for fiscal year *2013*, and except as provided in subsection (14)(b), *\$5,034* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii)(B) a maximum rate of ~~\$6,097~~ *\$6,343* for fiscal year ~~2010~~ *2012*, and ~~\$6,280~~ *\$6,497* for fiscal year *2013*, and except as provided in subsection (14)(b), *\$6,444* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(b) *If the fiscal year 2012 general fund revenue, including transfers in, reflected in the audited comprehensive annual financial report exceeds \$1,766,500,000, then the entitlements for fiscal year 2013 in this subsection (14) are the amounts to be paid for succeeding fiscal years.*

(15) "Total quality educator payment" means the payment resulting from multiplying \$3,036 for fiscal year 2008 and \$3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327."

Section 16. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) (a) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater.

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in state funding for the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) Whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and to increase the over-BASE budget levy *over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years* to support the

general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141.”

Section 17. Section 20-9-353, MCA, is amended to read:

“20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt an over-BASE budget amount for the district general fund that does not exceed the general fund budget limitations, as provided in 20-9-308.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1), any increase in local property taxes authorized by 20-9-308(4) *over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years* must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements or of the general fund payments established in 20-9-327 through 20-9-330 approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) If the proposition on any additional financing for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(4) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(5) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount, as allowed by 20-9-308, to the electors of the

district, the trustees shall comply with the provisions of subsections (2) through (4) of this section.”

Section 18. Section 20-9-507, MCA, is amended to read:

“20-9-507. Miscellaneous programs fund. (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, ~~the transfer of a fund balance from a tuition fund closed under 20-9-201,~~ or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, ~~the transfer of a tuition fund balance,~~ or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project, ~~funds transferred from a closed tuition fund,~~ and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.”

Section 19. Section 20-9-516, MCA, is amended to read:

“20-9-516. School facility and technology account. (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools for:

- (a) major deferred maintenance;
- (b) improving energy efficiency in school facilities;
- (c) critical infrastructure in school districts;
- (d) emergency facility needs; ~~and~~
- (e) technological improvements; *and*
- (f) *state reimbursement for school facilities as provided in 20-9-371.*

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; and

(c) the rental income received from power site leases as provided in 77-4-208.”

Section 20. Section 20-9-630, MCA, is amended to read:

“20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

~~(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.~~

~~(3)~~(2) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

~~(4)~~(3) (a) The block grant for the district general fund is equal to the average amount received in fiscal years 2002 and 2003 year 2011 by the district general fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(b) The block grant for the district transportation fund is equal to one-half of the average amount received in fiscal years 2002 and 2003 year 2011 by the district transportation fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(c) (i) The combined fund block grant is equal to the average amount received in fiscal years 2002 and 2003 year 2011. by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district."

Section 21. Section 20-10-147, MCA, is amended to read:

"20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county

superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or radios, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

~~(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."~~

Section 22. Ending fund balance limits. (1) Beginning July 1, 2016, the combined ending fund balance for all budgeted funds of a school district may not exceed 300% of the maximum general fund budget. The 300% limit is not applicable to the building reserve fund, the debt service fund, or the bus depreciation reserve fund.

(2) The county superintendent shall, upon completion of a school fiscal year, redistribute any amounts in excess of the 300% limit among any other school districts in the same county whose combined ending fund balance for all budgeted funds included in subsection (1) has not exceeded the 300% limit. The county superintendent shall redistribute funds equally to the school districts qualifying for redistribution on a per-quality-educator basis, calculated by dividing the total funds by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. School districts receiving the funds may place the funds in any budgeted fund of the district at the discretion of the board of trustees of each district.

(3) Unless an exception is granted under subsection (5), upon completion of a school fiscal year, a school district with combined ending fund balances in excess of the 300% limit shall cooperate with the county superintendent in effectuating the redistribution of excess funds as provided in subsection (2). A school district may make the payment required under this subsection from any fund or funds of the district other than the debt service fund, the building reserve fund, and the bus depreciation reserve fund.

(4) Any funds that cannot be redistributed within a county without causing a school district in the county to exceed the 300% limit must be remitted by the county treasurer to the state for deposit in the guarantee account provided for in 20-9-622.

(5) In accordance with 20-9-161, a school district shall report to the education and local government interim committee for any exception taken to the limits prescribed by subsection (1) of this section.

(6) This section does not apply to school districts that are in a nonoperating status under 20-9-505 or that are in the first year of operation after reopening under 20-6-502 or 20-6-503.

(7) Beginning July 1, 2013, the balance of a school district's flexibility fund may not exceed 150% of the school district's maximum general fund budget.

Section 23. Appropriation. (1) There is appropriated \$1 million for fiscal year 2013 from the general fund to the superintendent of public instruction. The purpose of the appropriation is to contribute to interlocal cooperative funds provided for in 20-3-363 to be paid to districts participating in multidistrict cooperatives. The superintendent shall pay to participating districts an amount in proportion to the size of the district's BASE budget compared to the sum of the BASE budgets of participating districts in all multidistrict cooperatives.

(2) By December 31, 2012, the prime applicant of a multidistrict cooperative shall report to the office of public instruction the name of each participating district along with a copy of the finalized agreement pursuant to 20-3-363. The office of public instruction shall pay the district's proportionate share no later than February 1, 2013.

Section 24. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 25. Codification instruction. [Sections 3, 4, 8 through 10, and 22] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 3, 4, 8 through 10, and 22].

Section 26. Coordination instruction. If House Bill No. 316 is not passed and approved in a form that reallocates at least 10% of the metalliferous mines license tax allocations in 15-37-117(1)(a), (1)(b), (1)(d), and (1)(e) to the state general fund and at least 10% of the lodging and facility use tax allocations in 15-65-121(1)(a) through (1)(e) to the state general fund, then [section 15 of this act], amending 20-9-306, is void and 20-9-306 is amended as follows:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) ~~\$246,085~~ \$256,003 for fiscal year ~~2010~~ 2012; and

(ii) ~~\$253,468~~ \$260,099 for each succeeding fiscal year;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~\$22,141~~ \$23,033 for fiscal year ~~2010~~ 2012;

(ii) ~~\$22,805~~ \$23,402 for each succeeding fiscal year; and

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for kindergarten through grade 6 elementary program:

(A) ~~\$22,141~~ \$23,033 for fiscal year ~~2010~~ 2012; and

(B) ~~\$22,805~~ \$23,402 for each succeeding fiscal year; plus

(ii) for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

(A) ~~\$62,704~~ \$65,231 for fiscal year ~~2010~~ 2012; and

(B) ~~\$64,585~~ \$66,275 for each succeeding fiscal year.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying \$20.40 times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(14) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$6,097~~ ~~\$6,343~~ for fiscal year ~~2010~~ ~~2012~~ and ~~\$6,280~~ ~~\$6,444~~ for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~\$4,763~~ ~~\$4,955~~ for fiscal year ~~2010~~ ~~2012~~ and ~~\$4,906~~ ~~\$5,034~~ for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~\$4,763~~ ~~\$4,955~~ for fiscal year ~~2010~~ ~~2012~~ and ~~\$4,906~~ ~~\$5,034~~ for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$6,097~~ ~~\$6,343~~ for fiscal year ~~2010~~ ~~2012~~ and ~~\$6,280~~ ~~\$6,444~~ for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying \$3,036 for fiscal year 2008 and \$3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327."

Section 27. Coordination instruction. If [this act] is passed and approved, the general fund appropriation for BASE aid in House Bill No. 2 is increased by \$3,419,812.

Section 28. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective on passage and approval and applies to school fiscal year 2012.

(2) [Sections 9 and 10] are effective July 1, 2013.

Section 29. Termination. [Sections 1, 7, and 8] terminate June 30, 2016.

Approved May 13, 2011

CHAPTER NO. 419

[SB 423]

AN ACT ESTABLISHING THE MONTANA MARIJUANA ACT AND REVISING LAWS RELATING TO THE USE OF MARIJUANA; CREATING A REGISTRY PROGRAM FOR THE CULTIVATION, MANUFACTURE, TRANSPORTATION, AND TRANSFER OF MARIJUANA BY CERTAIN INDIVIDUALS; REQUIRING REPORTING; ALLOWING INSPECTIONS; REQUIRING LEGISLATIVE MONITORING; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING A TRANSITION PROCESS; AMENDING SECTIONS 37-1-316, 37-3-343, 37-3-347, 41-5-216, 45-9-203, 46-18-202, 50-46-201, 50-46-202, AND 61-11-101, MCA; REPEALING SECTIONS 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, AND 50-46-210, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Short title — purpose. (1) [Sections 1 through 23] may be cited as the “Montana Marijuana Act”.

(2) The purpose of [sections 1 through 23] is to:

(a) provide legal protections to persons with debilitating medical conditions who engage in the use of marijuana to alleviate the symptoms of the debilitating medical condition;

(b) allow for the limited cultivation, manufacture, delivery, and possession of marijuana as permitted by [sections 1 through 23] by persons who obtain registry identification cards;

(c) allow individuals to assist a limited number of registered cardholders with the cultivation and manufacture of marijuana or marijuana-infused products;

(d) establish reporting requirements for production of marijuana and marijuana-infused products and inspection requirements for premises; and

(e) give local governments a role in establishing standards for the cultivation, manufacture, and use of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions.

Section 2. Definitions. As used in [sections 1 through 23], the following definitions apply:

(1) “Correctional facility or program” means a facility or program that is described in 53-1-202 and to which a person may be ordered by any court of competent jurisdiction.

(2) “Debilitating medical condition” means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient’s health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient’s treating physician and by:

(i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance imaging; or

(ii) confirmation of that diagnosis from a second physician who is independent of the treating physician and who conducts a physical examination;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) any other medical condition or treatment for a medical condition approved by the legislature.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Local government" means a county, a consolidated government, or an incorporated city or town.

(5) "Marijuana" has the meaning provided in 50-32-101.

(6) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(7) (a) "Marijuana-infused products provider" means a Montana resident who meets the requirements of [sections 1 through 23] and who has applied for and received a registry identification card to manufacture and provide marijuana-infused products for a registered cardholder.

(b) The term does not include the cardholder's treating or referral physician.

(8) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

(9) "Paraphernalia" has the meaning provided in 45-10-101.

(10) (a) "Provider" means a Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under [sections 1 through 23].

(b) The term does not include the cardholder's treating physician or referral physician.

(11) "Referral physician" means a person who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

(12) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(13) "Registered premises" means the location at which a provider or marijuana-infused products provider has indicated the person will cultivate or manufacture marijuana for a registered cardholder.

(14) “Registry identification card” means a document issued by the department pursuant to [section 3] that identifies a person as a registered cardholder, provider, or marijuana-infused products provider.

(15) (a) “Resident” means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of [sections 1 through 23] if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(16) “Second degree of kinship by blood or marriage” means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

(17) “Seedling” means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(18) “Standard of care” means, at a minimum, the following activities when undertaken by a patient’s treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient’s medical history;

(b) performing a relevant and necessary physical examination;

(c) reviewing prior treatment and treatment response for the debilitating medical condition;

(d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;

(e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

(f) monitoring the response to treatment and possible adverse effects; and

(g) creating and maintaining patient records that remain with the physician.

(19) “Treating physician” means a person who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) has a bona fide professional relationship with the person applying to be a registered cardholder.

(20) (a) “Usable marijuana” means the dried leaves and flowers of the marijuana plant and any mixtures or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by a person with a debilitating medical condition.

(b) The term does not include the seeds, stalks, and roots of the plant.

(21) “Written certification” means a statement signed by a treating physician or referral physician that meets the requirements of [section 7] and is provided in a manner that meets the standard of care.

Section 3. Department responsibilities — issuance of cards — confidentiality — reports. (1) (a) The department shall establish and

maintain a program for the issuance of registry identification cards to Montana residents who:

(i) have debilitating medical conditions and who submit applications meeting the requirements of [sections 1 through 23]; and

(ii) are named as providers or marijuana-infused products providers by persons who obtain registry identification cards for their debilitating medical conditions.

(b) Persons who obtain registry identification cards are authorized to cultivate, manufacture, possess, and transport marijuana as allowed by [sections 1 through 23].

(2) The department shall conduct criminal history background checks as required by [sections 4 and 5] before issuing a registry identification card for a person named as a provider or marijuana-infused products provider.

(3) Registry identification cards issued pursuant to [sections 1 through 23] must:

(a) be laminated and produced on a material capable of lasting for the duration of the time period for which the card is valid;

(b) state the name, address, and date of birth of the registered cardholder and of the cardholder's provider or marijuana-infused products provider, if any;

(c) state the date of issuance and the expiration date of the registry identification card;

(d) contain a unique identification number;

(e) easily identify whether the card is for a person with a debilitating medical condition, a provider, or a marijuana-infused products provider; and

(f) contain other information that the department may specify by rule.

(4) (a) The department shall review the information contained in an application or renewal submitted pursuant to [sections 1 through 23] and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) The department shall issue a registry identification card within 5 days of approving an application or renewal.

(5) Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) (a) Registry identification cards expire 1 year after the date of issuance unless:

(i) a physician has provided a written certification stating that a card is valid for a shorter period of time; or

(ii) a registered cardholder changes providers or marijuana-infused products providers.

(b) A provider's or marijuana-infused products provider's registry identification card expires at the time the department issues a card to a new provider or new marijuana-infused products providers named by a registered cardholder.

(7) A registered cardholder shall notify the department of any change in the cardholder's name, address, physician, provider, or marijuana-infused products providers or change in the status of the cardholder's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of persons to whom the department has issued registry identification cards. Except as provided in subsection (9), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform the official duties of the department; and

(b) authorized employees of state or local government agencies, including law enforcement agencies, only as necessary to verify that an individual is a lawful possessor of a registry identification card.

(9) The department shall provide the names of providers and marijuana-infused products providers to the local law enforcement agency having jurisdiction in the area in which the providers or marijuana-infused products providers are located. The law enforcement agency and its employees are subject to the confidentiality requirements of [section 17].

(10) (a) The department shall provide the board of medical examiners with the name of any physician who provides written certification for 25 or more patients within a 12-month period. The board of medical examiners shall review the physician's practices in order to determine whether the practices meet the standard of care.

(b) The physician whose practices are under review shall pay the costs of the board's review activities.

(11) The department shall report biannually to the legislature the number of applications for registry identification cards, the number of registered cardholders approved, the nature of the debilitating medical conditions of the cardholders, the number of providers and marijuana-infused products providers approved, the number of registry identification cards revoked, the number of physicians providing written certification for registered cardholders, and the number of written certifications each physician has provided. The report may not provide any identifying information of cardholders, physicians, providers, or marijuana-infused products providers.

(12) The board of medical examiners shall report annually to the legislature on:

(a) the number and types of complaints the board has received involving physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203; and

(b) the number of physicians whose names were provided to the board by the department as required under subsection (10). The report must include information on whether a physician whose practices were reviewed by the board pursuant to subsection (10) met the standard of care when providing written certifications.

Section 4. Persons with debilitating medical conditions — requirements — minors — limitations. (1) Except as provided in subsections (2) through (4), the department shall issue a registry identification card to a person with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the person's name, street address, and date of birth;

(d) proof of Montana residency;

(e) a statement that the person will be cultivating and manufacturing marijuana for the person's use or will be obtaining marijuana from a provider or a marijuana-infused products provider;

(f) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates, manufactures, or obtains for the person's debilitating medical condition;

(g) the name of the person's treating physician or referral physician and the street address and telephone number of the physician's office;

(h) the street address where the person is cultivating or manufacturing marijuana if the person is cultivating or manufacturing marijuana for the person's own use;

(i) the name, date of birth, and street address of the individual the person has selected as a provider or marijuana-infused products provider, if any; and

(j) the written certification and accompanying statements from the person's treating physician or referral physician as required pursuant to [section 7].

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the person is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana; and

(ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to serve as the minor's marijuana-infused products provider;

(C) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor;

(D) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) submits fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation. The parent or legal guardian shall pay the costs of the background check and may not obtain a registry identification card as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of [section 5].

(d) pledges, on a form prescribed by the department, not to divert to any person any marijuana cultivated or manufactured for the minor's use in a marijuana-infused product.

(3) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to [section 7] from a second physician in addition to the minor's treating physician or referral physician.

(4) A person may not be a registered cardholder if the person is in the custody of or under the supervision of the department of corrections or a youth court.

(5) A registered cardholder who elects to obtain marijuana from a provider or marijuana-infused products provider may not cultivate or manufacture marijuana for the cardholder's use unless the registered cardholder is the provider or marijuana-infused products provider.

(6) A registered cardholder may cultivate or manufacture marijuana as allowed under [section 10] only:

(a) at a property that is owned by the cardholder; or

(b) with written permission of the landlord, at a property that is rented or leased by the cardholder.

(7) No portion of the property used for cultivation and manufacture of marijuana for use by the registered cardholder may be shared with or rented or leased to a provider, a marijuana-infused products provider, or a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage.

Section 5. Provider types — requirements — limitations — activities. (1) The department shall issue a registry identification card to or renew a card for the person who is named as a provider or marijuana-infused products provider in a registered cardholder's approved application if the person submits to the department:

(a) the person's name, date of birth, and street address on a form prescribed by the department;

(b) proof that the person is a Montana resident;

(c) fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation;

(d) a written agreement signed by the registered cardholder that indicates whether the person will act as the cardholder's provider or marijuana-infused products provider;

(e) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or manufactures for a registered cardholder;

(f) a statement acknowledging that the person will cultivate and manufacture marijuana for the registered cardholder at only one location as provided in subsection (7). The location must be identified by street address.

(g) a fee as determined by the department to cover the costs of the fingerprint and background check and associated administrative costs of processing the registration.

(2) The department may not register a person under this section if the person:

(a) has a felony conviction or a conviction for a drug offense;

(b) is in the custody of or under the supervision of the department of corrections or a youth court;

(c) has been convicted of a violation under [section 16];

(d) has failed to:

(i) pay any taxes, interest, penalties, or judgments due to a government agency;

(ii) stay out of default on a government-issued student loan;

(iii) pay child support; or

(iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency; or

(e) is a registered cardholder who has designated a provider or marijuana-infused products provider in the person's application for a card issued under [section 4].

(3) (a) (i) A provider or marijuana-infused products provider may assist a maximum of three registered cardholders.

(ii) A person who is registered as both a provider and a marijuana-infused products provider may assist no more than three registered cardholders.

(b) If the provider or marijuana-infused products provider is a registered cardholder, the provider or marijuana-infused products provider may assist a maximum of two registered cardholders other than the provider or marijuana-infused products provider.

(4) A provider or marijuana-infused products provider may accept reimbursement from a cardholder only for the provider's application or renewal fee for a registry identification card issued under this section.

(5) Marijuana for use pursuant to [sections 1 through 23] must be cultivated and manufactured in Montana.

(6) A provider or marijuana-infused products provider may not:

(a) accept anything of value, including monetary remuneration, for any services or products provided to a registered cardholder;

(b) buy or sell mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-infused products; or

(c) use marijuana unless the person is also a registered cardholder.

(7) (a) A person registered under this section may cultivate and manufacture marijuana for use by a registered cardholder only at one of the following locations:

(i) a property that is owned by the provider or marijuana-infused products provider;

(ii) with written permission of the landlord, a property that is rented or leased by the provider or marijuana-infused products provider; or

(iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of [section 4].

(b) No portion of the property used for cultivation and manufacture of marijuana may be shared with or rented or leased to another provider or marijuana-infused products provider or another registered cardholder.

Section 6. Marijuana-infused products provider — requirements — allowable activities. (1) An individual registered as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a premises registered with the department that is used for the manufacture and preparation of marijuana-infused products; and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana-infused products.

(2) A marijuana-infused products provider:

(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

(b) may not provide a cardholder with marijuana in a form that may be used for smoking unless the marijuana-infused products provider is also a registered provider and is providing the marijuana to a registered cardholder who has selected the person as the person's registered provider.

(3) All registered premises on which marijuana-infused products are manufactured must meet any applicable standards set by a local board of health for a food service establishment as defined in 50-50-102.

(4) Marijuana-infused products may not be considered a food or drug for the purposes of Title 50, chapter 31.

Section 7. Written certification — accompanying statements. (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the person for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the person's treating physician and that the person has been under the physician's ongoing medical care as part of a bona fide professional relationship with the person; or

(ii) the person's referral physician;

(b) confirm that the person suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the person's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination that included a personal review of any medical records maintained by other physicians and that may have included the person's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) state that the medications, procedures, or other medical options have not been effective;

(g) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the person and has considered the potential drug interaction with marijuana;

(h) state that the physician has a reasonable degree of certainty that the person's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(i) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the person;

(j) list restrictions on the person's activities due to the use of marijuana;

(k) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(l) state that the physician will:

(i) continue to serve as the person's treating physician or referral physician; and

(ii) monitor the person's response to the use of marijuana and evaluate the efficacy of the treatment; and

(m) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

Section 8. Registry card to be carried and exhibited on demand — photo identification required. A registered cardholder, provider, or marijuana-infused products provider shall keep the person's registry identification card in the person's immediate possession at all times. The person shall display the registry identification card and a valid photo identification upon demand of a law enforcement officer, justice of the peace, or city or municipal judge.

Section 9. Health care facility procedures for patients with marijuana for use. (1) (a) Except for hospices and residential care facilities that allow the use of marijuana as provided in [section 11], a health care facility as defined in 50-5-101 shall take the following measures when a patient who is a registered cardholder has marijuana in the patient's possession upon admission to the health care facility:

(i) require the patient to remove the marijuana from the premises before the patient is admitted if the patient is able to do so; or

(ii) make a reasonable effort to contact the patient's provider, marijuana-infused products provider, court-appointed guardian, or person with a power of attorney, if any.

(b) If a patient is unable to remove the marijuana or the health care facility is unable to contact an individual as provided in subsection (1)(a), the facility shall contact the local law enforcement agency having jurisdiction in the area where the facility is located.

(2) A provider, marijuana-infused products provider, court-appointed guardian, or person with a power of attorney, if any, contacted by a health care facility shall remove the marijuana and deliver it to the patient's residence.

(3) A law enforcement agency contacted by a health care facility shall respond by removing and destroying the marijuana.

(4) A health care facility may not be charged for costs related to removal of the marijuana from the facility's premises.

Section 10. Legal protections — allowable amounts. (1) (a) A registered cardholder may possess up to 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana.

(b) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

(2) Except as provided in [section 11] and subject to the provisions of subsection (7), an individual who possesses a registry identification card issued pursuant to [sections 1 through 23] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the individual cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry if:

(a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

(b) a physician violates the standard of care or other requirements of [sections 1 through 23].

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana as permitted under [sections 1 through 23].

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana and is not a registered cardholder.

(6) Except as provided in [section 14], possession of or application for a registry identification card does not alone constitute probable cause to search the individual or the property of the individual possessing or applying for the registry identification card or otherwise subject the individual or property of the individual possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(7) The provisions of this section relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a registry identification card prior to an arrest or the filing of a criminal charge. It is not a defense to a criminal charge that an individual obtains a registry identification card after an arrest or the filing of a criminal charge.

(8) (a) A registered cardholder, a provider, or a marijuana-infused products provider is presumed to be engaged in the use of marijuana as allowed by [sections 1 through 23] if the person:

(i) is in possession of a valid registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under [sections 1 through 23].

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition.

Section 11. Limitations of the act. (1) [Sections 1 through 23] do not permit:

(a) any person, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate or manufacture marijuana for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in [sections 1 through 23] may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse a person for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a landlord to allow a tenant who is a registered cardholder, provider, or marijuana-infused products provider to cultivate or manufacture marijuana or to allow a registered cardholder to use marijuana.

(5) Nothing in [sections 1 through 23] may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in [sections 1 through 23] may be construed to allow a provider or marijuana-infused products provider to use marijuana or to prevent criminal prosecution of a provider or marijuana-infused products provider who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that a person with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the person to provide a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a tetrahydrocannabinol (THC) level of 5 ng/ml may be charged with a violation of 61-8-401.

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the person's registry identification card if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, or 61-8-410. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of 61-8-401 or 61-8-406; or

(ii) in 61-8-410 for a violation of 61-8-410.

(c) If a person's registry identification card is subject to renewal during the revocation period, the person may not renew the card until the full revocation period has elapsed. The card may be renewed only if the person submits all materials required for renewal.

Section 12. Prohibitions on physician affiliation with providers and marijuana-infused products providers — sanctions. (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;

(ii) offer a discount or any other thing of value to a person who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where medical marijuana is cultivated or manufactured or where marijuana-infused products are made.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the person the same fee that the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this chapter, or has not met the standard of care required under this chapter, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(3) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the medical use of marijuana.

Section 13. Local government authority to regulate. (1) To protect the public health, safety, or welfare, a local government may by ordinance or resolution regulate a provider or marijuana-infused products provider that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of locations where marijuana is cultivated or manufactured in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.

(2) A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused products providers from operating as storefront businesses.

Section 14. Inspection procedures. (1) The department and state or local law enforcement agencies may conduct unannounced inspections of registered premises.

(2) (a) Each provider and marijuana-infused products provider shall keep a complete set of records necessary to show all transactions with registered cardholders. The records must be open for inspection by the department and state or local law enforcement agencies during normal business hours.

(b) The department may require a provider or marijuana-infused products provider to furnish information that the department considers necessary for the proper administration of [sections 1 through 23].

(3) (a) A registered premises, including any places of storage, where marijuana is cultivated, manufactured, or stored is subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation during normal business hours.

(b) If any part of the registered premises consists of a locked area, the provider or marijuana-infused products provider shall make the area available for inspection without delay upon request of the department or state or local law enforcement officials.

(4) A provider or marijuana-infused products provider shall maintain records showing the names and registry identification numbers of registered cardholders to whom mature plants, seedlings, usable marijuana, or marijuana-infused products were transferred and the quantities transferred to each cardholder.

Section 15. Unlawful conduct by cardholders — penalties. (1) The department shall revoke and may not reissue the registry identification card of a person who:

- (a) is convicted of a drug offense;
- (b) allows another person to be in possession of the person's:
 - (i) registry identification card; or
 - (ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or
- (c) fails to cooperate with the department concerning an investigation or inspection if the person is registered and cultivating or manufacturing marijuana.

(2) A registered cardholder, provider, or marijuana-infused products provider who violates [sections 1 through 23] is punishable by a fine not to exceed \$500 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless otherwise provided in [sections 1 through 23] or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.

Section 16. Fraudulent representation — penalties. (1) In addition to any other penalties provided by law, a person who fraudulently represents to a law enforcement official that the person is a registered cardholder, provider, or marijuana-infused products provider is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

(2) A physician who purposely and knowingly misrepresents any information required under [section 7] is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

(3) A person convicted under this section may not be registered as a provider or marijuana-infused products provider under [section 5].

Section 17. Confidentiality of registry information — penalty. (1) Except as provided in 37-3-203, a person, including an employee or official of the department of public health and human services, commits the offense of disclosure of confidential information related to registry information if the person knowingly or purposely discloses confidential information in violation of [sections 1 through 23].

(2) A person convicted of a violation of this section shall be fined not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 18. Law enforcement authority. Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a person with a registry identification card.

Section 19. Forfeiture. (1) Marijuana, paraphernalia relating to marijuana, or other property seized by a law enforcement official from a person claiming the protections of [sections 1 through 23] in connection with the cultivation, manufacture, possession, transportation, distribution, or use of marijuana must be returned to the person immediately upon a determination that the person is in compliance with the provisions of [sections 1 through 23].

(2) A law enforcement agency in possession of mature marijuana plants or seedlings seized as evidence is not responsible for the care and maintenance of the plants or seedlings.

Section 20. Advertising prohibited. Persons with valid registry identification cards may not advertise marijuana or marijuana-related products in any medium, including electronic media.

Section 21. Hotline. (1) The department shall create and maintain a hotline to receive reports of suspected abuse of the provisions of [sections 1 through 23].

(2) The department may:

(a) investigate reports of suspected abuse of the provisions of [sections 1 through 23]; or

(b) refer reports of suspected abuse to the law enforcement agency having jurisdiction in the area where the suspected abuse is occurring.

Section 22. Legislative monitoring. (1) The children, families, health, and human services interim committee shall provide oversight of the department's activities related to registering individuals pursuant to [sections 1 through 23] and of issues related to the cultivation, manufacture, and use of marijuana pursuant to [sections 1 through 23].

(2) The committee shall identify issues likely to require future legislative attention and develop legislation to present to the next regular session of the legislature.

Section 23. Rulemaking authority — fees. (1) The department shall adopt rules necessary for the implementation and administration of [sections 1 through 23]. The rules must include but are not limited to:

(a) the manner in which the department will consider applications for registry identification cards for providers and marijuana-infused products providers and for persons with debilitating medical conditions and renewal of registry identification cards;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under [sections 4 and 5];

(d) other rules necessary to implement the purposes of [sections 1 through 23].

(2) The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 23].

Section 24. Section 37-1-316, MCA, is amended to read:

“37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards;

(19) *the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23].*

Section 25. Section 37-3-343, MCA, is amended to read:

“37-3-343. Practice of telemedicine prohibited without license — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349.

(2) A telemedicine license authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine license pursuant to 37-3-345(2).

(3) A telemedicine license authorizes an out-of-state physician to practice only telemedicine. A telemedicine license does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) *A telemedicine license may not be used by a physician as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23].*

~~(4)~~(5) A physician who practices telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, in violation of the terms or conditions of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

Section 26. Section 37-3-347, MCA, is amended to read:

"37-3-347. Reasons for denial of license — alternative route to licensed practice. (1) The board may deny an application for a telemedicine license if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a license required by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board;

(b) *plans to use telemedicine as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23];*

~~(b)~~(c) fails to pay a required fee;

~~(e)~~(d) does not possess the qualifications or character required by this chapter; or

~~(d)~~(e) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine license provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana."

Section 27. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records — sharing and access to records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation

management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003.

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to [section 4 or 5] is currently under youth court supervision."

Section 28. Section 45-9-203, MCA, is amended to read:

"45-9-203. Surrender of license. (1) If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

(2) If a person with a registry identification card issued pursuant to [section 4 or 5] is convicted of an offense under this chapter, the court shall:

(a) at the time of sentencing, require the person to surrender the registry identification card; and

(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under [section 15]."

Section 29. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- (a) prohibition of the offender's holding public office;
- (b) prohibition of the offender's owning or carrying a dangerous weapon;
- (c) restrictions on the offender's freedom of association;
- (d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) *a requirement that the offender surrender any registry identification card issued under [section 3];*

~~(f)~~(g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) *If a sentencing judge requires an offender to surrender a registry identification card issued under [section 3], the court shall return the card to the department of public health and human services and provide the department with information on the offender's sentence. The department shall revoke the card for the duration of the sentence and shall return the card if the offender successfully completes the terms of the sentence before the expiration date listed on the card."*

Section 30. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) A person who possesses a registry identification card issued pursuant to 50-46-103 before [the effective date of this section] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 31. Section 50-46-202, MCA, is amended to read:

"50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty. (1) *The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure except to:*

(a) *authorized employees of the department as necessary to perform official duties of the department; or*

(b) *state or local law enforcement agencies only as necessary to verify that a person is a lawful possessor of a registry identification card.*

(1)(2) A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of ~~50-46-103~~ *this section.*

(2)(3) A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 32. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days

after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(6) (a) *If a person who holds a valid registry identification card issued pursuant to [section 4 or 5] is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall require the person to surrender the registry identification card.*

(b) *Within 5 days after the conviction becomes final, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."*

Section 33. Emergency rulemaking. The department of public health and human services shall adopt emergency rules as provided in 2-4-303 to allow for issuance of registry identification cards in accordance with the provisions of [sections 1 through 23] beginning June 1, 2011.

Section 34. Repealer. The following sections of the Montana Code Annotated are repealed:

50-46-101. Short title.

50-46-102. Definitions.

50-46-103. Procedures — minors — confidentiality — report to legislature.

50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use.

- 50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty.
- 50-46-205. Limitations of Medical Marijuana Act.
- 50-46-206. Affirmative defense.
- 50-46-207. Fraudulent representation of medical use of marijuana — penalty.
- 50-46-210. Rulemaking — fees.

Section 35. Transition. (1) Registry identification cards issued to persons with debilitating medical conditions prior to [the effective date of this section] are valid until the expiration date listed on the card.

(2) (a) The department of public health and human services may issue registry identification cards to persons with debilitating medical conditions and to the persons named as providers or marijuana-infused products providers beginning June 1, 2011, under emergency rules adopted pursuant to [section 33].

(b) Until October 1, 2011, the department may issue cards to persons applying as providers or marijuana-infused products providers before the department has obtained the results of the fingerprint and background check required under [sections 4 and 5].

(c) A person who obtains a registry identification card as a provider or marijuana-infused products provider before October 1, 2011, shall submit fingerprints as required by [sections 4 and 5] no later than October 1, 2011.

(3) (a) The department shall revoke the registry identification card issued to a provider or marijuana-infused products provider under subsection (2) if:

(i) the person fails to submit fingerprints by October 1, 2011; or

(ii) the results of a fingerprint and background check conducted after issuance of the card shows that the person is ineligible for the card.

(b) The department shall notify the provider or marijuana-infused products provider and the registered cardholder who named the provider or marijuana-infused products provider that the person may no longer assist the registered cardholder with the use of marijuana to alleviate the symptoms of the cardholder's debilitating medical condition.

(4) A person who obtained a registry identification card as a caregiver pursuant to 50-46-103 before [the effective date of this section] may not be in possession of mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products on July 1, 2011, if the person has not obtained a registry identification card pursuant to the provisions of [sections 1 through 23] as provided for in subsection (2). Before July 1, 2011, a caregiver who has not obtained a registry identification card pursuant to [sections 1 through 23] shall take any mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products still in the caregiver's possession to the law enforcement agency having jurisdiction in the caregiver's area. The law enforcement agency shall destroy the items.

Section 36. Codification instruction. [Sections 1 through 23] are intended to be codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections 1 through 23].

Section 37. Coordination instruction. If both House Bill No. 175 and [this act] are passed and approved and [this act] repeals 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, and 50-46-210, then House Bill No. 175 is void.

Section 38. Instructions to code commissioner. (1) Wherever a reference to “medical use of marijuana” or “medical marijuana” appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change the reference to “use of marijuana for a debilitating medical condition”.

(2) Wherever a reference to 50-46-102 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 2 of Senate Bill No. 423], if appropriate.

(3) Wherever a reference to 50-46-205 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 11 of Senate Bill No. 423].

Section 39. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 40. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2011.

(2) [Sections 20, 30, 31, 33, the repeal of 50-46-103 provided for in section 34, and sections 35 and 38], and this section are effective on passage and approval.

Approved May 13, 2011

RESOLUTIONS
Adopted by the
SIXTY-SECOND LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2011, through April 28, 2011

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE PRESIDENT TO APPROVE FEDERAL LEGISLATION THAT WOULD RESULT IN THE IMMEDIATE REMOVAL OF THE GRAY WOLF FROM THE ENDANGERED SPECIES LIST IN MONTANA.

WHEREAS, in 2002, the gray wolf population in Montana, Idaho, and Wyoming achieved the biological requirement of a minimum of 30 breeding pairs and at least 300 wolves in a metapopulation in the Northern Rocky Mountains, a threshold established by the United States Fish and Wildlife Service to conclude that the gray wolf is recovered and should be delisted; and

WHEREAS, the tristate wolf population has remained on the rise with an estimated 115 breeding pairs and 1,706 wolves total at the end of 2009, including an estimated minimum of 37 breeding pairs and 524 wolves in Montana; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks has maintained a federally approved wolf management plan for several years and has proven that the plan, including the use of a public hunt, will maintain a secure, viable population of gray wolves in Montana; and

WHEREAS, the United States Fish and Wildlife Service has delisted the gray wolf in Montana twice (on March 28, 2008, and on May 4, 2009), and despite proven, effective state management, the species has been relisted both times by court ruling; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks has joined with the United States Departments of Interior and Justice in defense of the delisting decision and to appeal the most recent court ruling relisting the gray wolf because state management of the species is the preferred alternative to federal management of state wildlife; and

WHEREAS, even if the appeal is successful and the gray wolf is delisted in Montana, certain organizations may continue to challenge the delisting and state management of the gray wolf; and

WHEREAS, the relisting of the gray wolf in Montana has stripped the state of its ability to most effectively manage gray wolves at a time when biological and social impacts of the species are exceeding carrying capacity; and

WHEREAS, any delay in the delisting of the gray wolf will exacerbate these negative biological and social impacts and erode the broad base of public support Montana has developed for its management of the gray wolf; and

WHEREAS, the 62nd Legislature believes that federal legislation is the most effective way to ensure that the gray wolf is removed from the endangered species list in Montana and to ensure that management of the species will remain with the state and the state agency best suited to successfully maintain a secure, viable gray wolf population in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 62nd Legislature:

(1) fully supports the transfer of management of the gray wolf to the state of Montana;

(2) defends the efforts of the Montana Department of Fish, Wildlife, and Parks and the United States Fish and Wildlife Service to remove the gray wolf from the federal and state endangered species lists;

(3) urges Congress to quickly pass federal legislation that will result in the immediate removal of the gray wolf from the endangered species list in Montana and ensure the ability of the state to continue its successful management of the species; and

(4) urges the President and the President's administration to fully support such legislation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of the Interior, and the Director of the United States Fish and Wildlife Service.

Adopted March 19, 2011

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE DESIGNATION OF NATIONAL MONUMENTS IN MONTANA WITHOUT THE CONSENT OF THE MONTANA LEGISLATURE AND THE GOVERNOR.

WHEREAS, the Antiquities Act of 1906, 16 U.S.C. 431 through 433, authorizes the President of the United States to proclaim national monuments on federal lands without the consent of Congress or states and without regard to federal, state, and local land management policies; and

WHEREAS, a United States Bureau of Land Management (BLM) internal draft memorandum states that an area identified as "Montana's Northern Prairie", a 2.5-million-acre expanse bordering the Bitter Creek Wilderness Study Area in Northeastern Montana and Grasslands National Park in Canada, may be a good candidate "for National Monument designation under the Antiquities Act"; and

WHEREAS, the BLM internal memorandum states that this "cross-boundary conservation unit would provide an opportunity to restore prairie wildlife and the possibility of establishing a new national bison range"; and

WHEREAS, the BLM internal memorandum also states that this "landscape conservation opportunity would require conservation easements, willing seller acquisitions, and withdrawal from the public domain"; and

WHEREAS, the Montana grasslands referred to in the internal memorandum are currently managed by the BLM pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701, et seq., which directs the BLM to manage public lands in a manner consistent with resource management plans; and

WHEREAS, the BLM is currently developing and revising a resource management plan for the lands within the area referenced in the BLM internal draft memorandum; and

WHEREAS, BLM's revision process calls for broad input and participation consistent with existing state and local land management laws and policies; and

WHEREAS, the designation of a national monument in the areas referred to in the BLM's internal memorandum would undercut the integrity of the resource management plan development and revision process; and

WHEREAS, a presidential proclamation designating a national monument by the stroke of a pen without the state's consent and in derogation of local, state, and federal land management policies exceeds the bounds of legitimate presidential authority provided by the United States Constitution; and

WHEREAS, the Antiquities Act states, "The President ... may reserve as a part [of a national monument] parcels of land, the limits of which in all cases shall be confined to the smallest areas compatible with the proper care and management of the objects to be protected"; and

WHEREAS, the lands referenced in the BLM's internal memorandum exceed 2 million acres and do not meet the "smallest areas compatible" requirement as set forth in the Antiquities Act; and

WHEREAS, the lives and livelihoods of Montanans in the area depend on multiple-use access to BLM-managed lands and will be adversely affected by a national monument designation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana expresses its opposition to the presidential designation of any new national monument in Montana, including a national monument referred to by the BLM as "Montana's Northern Prairie", without the consent of the Legislature and the Governor.

BE IT FURTHER RESOLVED, that the Legislature urges Congress to amend the Antiquities Act to require land reserved as part of a national monument to be confined to small discrete monuments or memorials and to preclude the presidential designation of a national monument from taking effect without the consent of Congress.

BE IT FURTHER RESOLVED, that the Legislature urges the federal government to manage federal public lands in Montana according to state and local resource management plans and policies and with public input as required by FLPMA.

BE IT FURTHER RESOLVED, that the Legislature strongly opposes any presidential action that would unnecessarily restrict public access to or use of federal lands.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of Montana's Congressional Delegation, and the Governor of the State of Montana.

Adopted March 5, 2011

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CREATING MONTANANS WITH DEVELOPMENTAL DISABILITIES WEEK.

WHEREAS, in order to ensure the full inclusion of people with developmental disabilities into society, it is necessary to expand the public's knowledge, awareness, and understanding of developmental disabilities; and

WHEREAS, some Montanans have a variety of developmental disabilities, and every human life has value; and

WHEREAS, promoting a greater understanding between those with and without developmental disabilities will lead to increased opportunities for interaction between people with and without developmental disabilities and will promote a common awareness and understanding of current developmental disability issues; and

WHEREAS, many Montanans with developmental disabilities contribute much to society; and

WHEREAS, Montana has benefited from art and entertainment produced by Montanans with developmental disabilities; and

WHEREAS, Montanans with developmental disabilities live productive lives in a respectful and dignified way; and

WHEREAS, many Montana businesses benefit from the abilities of Montanans with developmental disabilities; and

WHEREAS, a greater awareness of the needs of those with developmental disabilities can help promote an understanding of the importance of providing opportunities to people with developmental disabilities to develop and apply independent living skills that are critical to personal success in society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature designate the second week of May as Montanans With Developmental Disabilities Week.

BE IT FURTHER RESOLVED, that the Legislature declares that the observance of an annual Montanans With Developmental Disabilities Week is timely and necessary, and encourages all people, school districts, community colleges, cities and counties, public and private institutions of higher education, state and local agencies, nonprofit and community-based organizations, and private businesses and corporations to observe Montanans With Developmental Disabilities Week by declaring appropriate classroom instructional time or by coordinating all inclusive activities to be conducted during that week to afford opportunities for Montana citizens to learn more about the developmental disability community and to celebrate and honor its role in contemporary American society.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Speaker of the Montana House of Representatives, the President of the Montana Senate, the Superintendent of Public Instruction, the President of the Board of Regents of Higher Education, the president of each public or private university, college, or community college in Montana, the Director of the Department of Public Health and Human Services, the Director of the Montana Statewide Independent Living Council, and the Director of the Montana Council on Developmental Disabilities.

Adopted March 5, 2011

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING FOREST PRODUCTS INDUSTRY WEEK.

WHEREAS, the Montana forest products industry provides for the production of locally made wood products from Montana forests; and

WHEREAS, the Montana forest products industry provides for the stewardship of both private and public Montana forests; and

WHEREAS, the Montana forest products industry provides for the gainful employment of many of Montana's citizens; and

WHEREAS, the Montana forest products industry provides for the maintenance of access to both public and private forests for the enjoyment of the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature designates the 7-day period beginning on the third Sunday of October in each year as Montana Forest Products Industry Week.

BE IT FURTHER RESOLVED, that the Legislature declares that the observance of an annual Montana Forest Products Industry Week is timely and necessary and encourages the Governor, all people, school districts, community colleges, cities and counties, public and private institutions of higher education, state and local agencies, nonprofit and community-based organizations, and private businesses and corporations to observe Montana Forest Products Industry Week by issuing proclamations and honoring the forest products industry with appropriate ceremonies and activities.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Speaker of the Montana House of Representatives, the President of the Montana Senate, the Superintendent of Public Instruction, the President of the Board of Regents of Higher Education, the president of each public or private university, college, or community college in Montana, the Director of the Department of Natural Resources and Conservation, and the Director of the Department of Commerce.

Adopted March 11, 2011

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY CHILDHOOD HUNGER IN MONTANA AND WAYS TO IMPROVE ACCESS TO NUTRITIOUS FOOD FOR ALL MONTANA CHILDREN.

WHEREAS, more than 92,000 Montana children experience hunger and lack access to nutritious foods at various times each week and month; and

WHEREAS, the Montana Food Bank Network has seen children's visits for emergency food increase from 113,768 children during a 6-month period in 2009 to 165,443 children during the same 6-month period in 2010; and

WHEREAS, U.S. census figures show that poverty in Montana has increased from 14.8% in 2008 to 15.1% in 2009; and

WHEREAS, a family of four at the federal poverty level earns \$1,838 a month and typically spends most of that amount on rent, child care, utilities, transportation, and medical expenses, meaning many families have little or no money for food; and

WHEREAS, research shows that a chronic lack of good nutrition results in a significantly increased risk of obesity, health problems, and behavioral and social problems and in the potential for decreased academic achievement, including an inability to complete a high school education; and

WHEREAS, children with poor health and academic outcomes during their school years have a lower chance of achieving good health and self-sufficiency as adults, creating greater potential for future dependency on public assistance programs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study the degree to which Montana children lack access to adequate nutritious food and to make recommendations on ways to alleviate childhood hunger and improve access to nutritious foods for children throughout Montana.

BE IT FURTHER RESOLVED, that the study examine and make recommendations on:

(1) existing state, federal, local, and private programs that seek to reduce childhood hunger and improve children's access to nutritious foods, including but not limited to programs based in child-care facilities and schools;

(2) closing gaps that exist in the services offered by existing programs and reducing the barriers that exist to providing services to children throughout the state;

(3) ways in which communities and community organizations, including faith-based groups, could work together to:

(a) identify gaps in services;

(b) create a central clearinghouse for program information;

(c) share their expertise in areas such as nutrition education for children, growing one's own food, and basic food preparation skills; and

(d) expand successful programs into new communities;

(4) ways to encourage the use of Montana farm products in schools and other facilities and programs in which children are the primary users;

(5) policy changes needed at the state or federal level to increase participation in and improve on existing programs, including a review of existing tax policies and changes to those policies that may alleviate childhood hunger;

(6) the strategic use of public funds in order to produce efficiencies and create a strong case for public and private investments, including ways the state, communities, and faith-based groups could most efficiently raise awareness about childhood hunger through coordinated communications campaigns that target specific audiences, identify specific needs, and promote concrete solutions; and

(7) ways to measure the progress that existing or proposed efforts are making toward the goal of ending childhood hunger.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Department of Public Health and Human Services, the Office of

Public Instruction, the Department of Agriculture, the Department of Labor and Industry, the Department of Commerce, local school districts, community programs offering food assistance to low-income children, tribal representatives, private organizations, faith-based groups, and other organizations as appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 20, 2011

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF MONTANA'S INDIVIDUAL INCOME TAX SYSTEM AND OPTIONS TO REVISE THE INDIVIDUAL INCOME TAX.

WHEREAS, the Montana individual income tax is the largest source of state general fund revenue; and

WHEREAS, Montana's individual income tax laws generally conform with the Internal Revenue Code of 1986, as amended; and

WHEREAS, the State of Montana has enacted a variety of state-specific deductions, exclusions, exemptions, credits, and other special tax provisions; and

WHEREAS, the enactment of deductions, exclusions, exemptions, credits, and other special tax provisions may not achieve their intended purpose and may increase the complexity of complying with the state's individual income tax laws and increase the costs of administering and enforcing the state's individual income tax laws; and

WHEREAS, simplifying Montana's individual income tax laws would further enhance taxpayer compliance with state income tax laws, reduce administrative and enforcement costs, improve predictability for Montana's taxpayers, and provide stability of revenue for the state general fund, and promote economic development; and

WHEREAS, the Revenue and Transportation Interim Committee has recently conducted limited studies of the state's individual income tax structure.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the provisions of Montana's individual income tax laws, including but not limited to:

(a) general provisions;

(b) conformity with federal income tax law;

(c) provisions related to married filing jointly and married filing separately;

and

(d) Montana-specific deductions, exclusions, exemptions, credits, and other special tax provisions;

(2) conduct an analysis that evaluates the individual income tax in terms of obligation or incidence; and

(3) conduct an analysis of Montana-specific deductions, exclusions, exemptions, credits, and other special tax provisions to determine:

(a) whether the deductions, exclusions, exemptions, credits, and other special income tax provisions are meeting their intended purpose;

(b) the costs of the deductions, exclusions, exemptions, credits, and special income tax provisions;

(4) analyze compliance and administrative costs associated with the state individual income tax, including but not limited to:

(a) taxpayer compliance costs; and

(b) auditing and enforcement costs;

(5) assess the complexity of the state's individual income tax structure;

(6) consider options to simplify the state's individual income tax structure, including but not limited to options related to:

(a) conformity with federal income tax laws;

(b) the individual income tax base;

(c) the reduction or elimination of deductions, exclusions, exemptions, credits, and other special tax provisions;

(d) revising Montana's individual income tax rate structure;

(e) the filing provisions for married taxpayers;

(7) evaluate the advantages and disadvantages of revising the state's individual income tax structure according to the criteria described in subsection (2).

BE IT FURTHER RESOLVED, that the study rely on, to the extent feasible, information presented to the Revenue and Transportation Interim Committee related to the House Joint Resolution No. 61 study of the conformity of Montana's income tax laws with federal income tax laws, passed by the 60th Legislature, and the Senate Joint Resolution No. 37 study of filing options for married taxpayers under Montana's individual income tax law, passed by the 61st Legislature.

BE IT FURTHER RESOLVED, that the study consider the knowledge and advice of:

(1) certified public accountants;

(2) tax attorneys;

(3) taxpayer groups;

(4) individual income taxpayers;

(5) the department of revenue;

(6) other persons with knowledge of state and federal income tax laws; and

(7) tax policy experts, business, industry, and agriculture groups, and economic development organizations for replacing the individual income tax with another revenue source or sources.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded before September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR EXTENDED HOURS AT THE MORGAN-MONCHY PORT OF ENTRY.

WHEREAS, improving border services to increase industry competitiveness is important for continued growth of the Montana economy; and

WHEREAS, a recent analysis identified limited border services as a potential barrier to growth; and

WHEREAS, increasing access to key transportation trade corridors is important for improving industry competitiveness; and

WHEREAS, the Morgan-Monchy port of entry is only open from 9 a.m. to 6 p.m. from September 16 to May 31 and from 8 a.m. to 9 p.m. from June 1 to September 15.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 62nd Legislature urge the United States Congress to support extended hours at the Morgan-Monchy port of entry on the Montana and Saskatchewan border; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Montana's Congressional Delegation.

Adopted March 21, 2011

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE MILITARY SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES.

WHEREAS, all Americans have the right, by virtue of wearing the noble title of citizen, to great personal freedoms in the pursuit of life, liberty, and happiness; and

WHEREAS, the history of our young country demonstrates countless examples of bravery and personal sacrifice in order to preserve the freedoms and liberties of the collective citizenry; and

WHEREAS, since September 11, 2001, the nation has once again called upon those who have dedicated their lives to the defense of the nation to stand up against forces that wish ill upon the United States; and

WHEREAS, Montanans have always answered the call to defend the nation, and Montanans will continue to serve and lead in the global war on terror; and

WHEREAS, Montanans serving in every branch of service, both on active duty and in the National Guard and Reserves, have been deployed in the global war on terror at great personal sacrifice to themselves and their families; and

WHEREAS, a number of Montanans have made the ultimate sacrifice in Operation Enduring Freedom and Operation Iraqi Freedom; and

WHEREAS, we as Montanans will continue to support these heroes as they return home to face the challenge of rejoining family, friends, and community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the dedication, professionalism, and bravery of all Montanans who have served and will serve in the armed forces of the United States as a part of the global war on terror.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the respective Secretaries of the United States Army, Navy, and Air Force, the Commandant of the United States Marine Corps, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard.

BE IT FURTHER RESOLVED, that the Secretary of State, in coordination with the Montana Department of Military Affairs, be encouraged to promote this resolution by encouraging the family members and friends of Montana's active duty military service members to contact the Department with the names and mailing addresses of the service members so that the Department may send a copy of this resolution to each Montana service member.

BE IT FURTHER RESOLVED, that the purpose and intent of this resolution is to convey to Montana service personnel that the heartfelt thanks of all Montanans are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted March 25, 2011

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS TO IMPROVE THE MANAGEMENT, RECOGNITION, AND COORDINATION OF STATE PARKS AND OUTDOOR RECREATION AND HERITAGE RESOURCE PROGRAMS OPERATED BY THE STATE OF MONTANA.

WHEREAS, state parks, outdoor recreation, and heritage resources are vitally important to families, communities, and the tourism economy of Montana; and

WHEREAS, Montana is blessed with some of the greatest resources in the United States; and

WHEREAS, 20 years of studies and reports identifying the need to improve the management, image, and organization of Montana's state parks have resulted in limited success; and

WHEREAS, well-managed boating, snowmobiling, and off-highway vehicle programs are important to Montana citizens as a form of thrift and in supporting a healthy tourism economy; and

WHEREAS, Montana state parks have magnificent natural, cultural, and recreational resources that require management for multiple uses; and

WHEREAS, the mission and management objectives for state parks may differ from many other programs administered by the Department of Fish, Wildlife, and Parks and need to be raised in priority and focus; and

WHEREAS, use of state parks by Montana residents has increased 78% since 2002; and

WHEREAS, demands for services at those parks and conservation of park resources need to be balanced; and

WHEREAS, hunting and fishing license dollars cannot be used to operate park and recreation programs; and

WHEREAS, cities and counties also work to provide for and coordinate strong outdoor recreation programs to maintain healthy communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review audits and studies related to the management, support, and funding of state parks and outdoor recreational and heritage resource programs;

(2) evaluate the priority, organizational structure, and management of Department of Fish, Wildlife, and Parks programs related to state parks, boating, off-highway vehicles, and snowmobiling;

(3) evaluate the relationship between state, city, county, and federal park and recreation programs and provide recommendations for improving statewide coordination and communication between these programs;

(4) identify methods to improve the management of state parks and recreational and heritage resources for Montana citizens while supporting local communities and their economic health;

(5) compile and review information on other state park and recreational systems in the Rocky Mountain region, including their organizational structure, management, and governance;

(6) recommend changes to improve the balance, effectiveness, and priority of parks, recreation, and heritage resource stewardship in Montana; and

(7) propose legislation for consideration by the 63rd Legislature that:

(a) raises the awareness, professionalism, and priority of state parks and recreational programs in Montana; and

(b) establishes a state parks and recreation board that fosters additional citizen involvement and oversight of these programs.

BE IT FURTHER RESOLVED, that if the study results in a recommendation that the administration of state parks be moved out of the Department of Fish, Wildlife, and Parks, it be done with the intent to consolidate and improve the effectiveness of state park and recreation program management.

BE IT FURTHER RESOLVED, that the study involve the participation of recreation user groups, local, state, federal, and tribal stakeholders, including city officials, county commissioners, national park service representatives, heritage resource professionals, and other stakeholders interested in state park and recreation program management.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE IMPLICATIONS, OPTIONS, AND REPERCUSSIONS OF A HEALTH INSURANCE EXCHANGE IN THE STATE OF MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE.

WHEREAS, Public Law 111-148 and Public Law 111-152 provide that a state has the option of establishing a health insurance exchange or allowing the Secretary of the U.S. Department of Health and Human Services to decide on or before January 1, 2013, whether to establish an exchange for any state that will not have an operational exchange by January 1, 2014; and

WHEREAS, the 62nd Legislature has through numerous votes indicated its concerns about many aspects of Public Law 111-148 and Public Law 111-152; and

WHEREAS, the wide-ranging implications of Public Law 111-148 and Public Law 111-152 for health insurance in the State of Montana, the health insurance industry, and the health care industry in this state suggest that the state has a duty to investigate approaches to developing a state exchange for Montanans, participating in a regional exchange, or leaving the decision of a health insurance exchange to federal authorities; and

WHEREAS, the State of Montana itself currently provides health insurance for its employees and may save money by allowing those state employees to purchase their insurance on a health insurance exchange.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct staff resources for a joint committee to review:

(a) the feasibility of creating a state-based health insurance exchange or participating in a regional health insurance exchange, including:

(i) options being considered in other states regarding developing and operating health insurance exchanges, as described in Public Law 111-148 and Public Law 111-152;

(ii) variations on how an exchange functions in the private marketplace for health insurance. As part of this study, the interim committee or joint committee shall consider whether a health insurance exchange reduces the marketing cost for health insurance and what measures may be needed to improve marketing efficiency if an exchange is developed in the state or regionally.

(iii) an evaluation of whether the exchange should offer a full scope of services or whether a more limited scope of services is appropriate;

(iv) an evaluation of whether an exchange can be used to facilitate the sale of health insurance across state lines and, if so, what changes in state law may be necessary;

(v) an evaluation of the efficiency, cost, and other considerations of including an application for a medicaid waiver to allow premium assistance inside the exchange;

(vi) an evaluation of whether an exchange should define levels of contributions and plan criteria;

(vii) an evaluation of the feasibility of premium aggregation for multiple employers of an employee; and

(viii) an evaluation of how an exchange will interact with insurance producers, including the effect on their compensation;

(b) the feasibility of discontinuing a health insurance benefit for state employees and legislators, including:

(i) what provisions may be necessary to neutralize the costs to state employees of various salary levels for participating in a health insurance exchange; and

(ii) what costs or savings might accrue to the state for discontinuing health insurance benefits for state employees and legislators.

(2) Based on the study, that the interim committee or joint committee make recommendations for legislation or a report to the 63rd Legislature regarding whether the state should proceed with the development of a state exchange or pursue participation in a regional exchange. If the recommendation is to proceed with development of a state exchange, the interim committee or joint committee shall provide draft legislation outlining a work plan and a timeline for implementation and future legislation, if needed. If the recommendation is to proceed with participation in a regional exchange, the interim committee or joint committee shall provide recommendations for changes in law or legislation necessary to implement a regional exchange.

(3) That the study include nonvoting stakeholder participants, including representatives of domestic insurance companies and health service corporations, small business, labor, the physician and health care provider community, the medical facility community, consumers, and insurance producers.

BE IT FURTHER RESOLVED, that the recommendations for legislation or a report must be prepared by staff of the Legislative Services Division and must include estimated fiscal impacts from the Legislative Fiscal Division.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 28, 2011

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF LOCAL FIRE PROTECTION AND EMERGENCY SERVICE ENTITIES AND FIREFIGHTER AND EMERGENCY MEDICAL TECHNICIAN BENEFITS.

WHEREAS, the Montana Legislature recognizes the invaluable public service provided by Montana's paid and volunteer firefighters and emergency medical technicians; and

WHEREAS, numerous bills have been introduced during the 62nd Legislature that would affect qualifications, duties, and benefits for paid and volunteer firefighters and emergency medical technicians; and

WHEREAS, legislation has also been introduced that would affect the powers and duties of fire departments, fire districts, fire service areas, and fire companies;

WHEREAS, the Department of Natural Resources and Conservation requires that counties provide workers' compensation insurance coverage for operators of firefighting apparatus provided to counties and assigned to fire agencies in the counties pursuant to agreements entered into as part of the State-County Cooperative Fire Protection Program; and

WHEREAS, many fire districts, fire service areas, and fire companies do not have the financial resources to comply with this requirement; and

WHEREAS, the powers, duties, and jurisdictions of local government fire agencies are varied and complex and warrant thorough analysis and understanding by the Legislature; and

WHEREAS, the House Local Government committee recognizes that a comprehensive review of local fire protection, emergency services, and firefighter and emergency medical technician benefits is necessary to identify problems and consider potential solutions for providing adequate, consistent, and coordinated local fire protection and emergency services and adequate, consistent, and coordinated benefits to paid and volunteer firefighters and emergency medical technicians who serve local governments and their citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim or statutory committee, pursuant to section 5-5-217, MCA, to conduct a comprehensive study of local fire protection and emergency services, how those services are paid for, and benefits provided to paid and volunteer firefighters and emergency medical technicians, including workers' compensation, disability, and retirement.

BE IT FURTHER RESOLVED, that the committee conducting the study:

(1) review the current structure and function of local fire protection agencies and emergency services, including municipal fire departments, rural fire districts, fire service areas, fire companies, and emergency medical technician services;

(2) examine how local governments pay for the various fire protection and emergency services in their jurisdictions;

(3) review the current benefits provided to paid and volunteer firefighters and emergency medical technicians by local governments and the financial capacity of the local governments to provide those benefits;

(4) review legislation introduced during the 62nd Legislature intended to modify local fire protection and emergency services and firefighter and emergency medical technician duties, qualifications, and benefits, the reasons for the legislation, and the outcome of the legislation;

(5) examine the Department of Natural Resources and Conservation's State-County Cooperative Fire Protection Program, the agreements entered into between the state and counties, and the coordination between the state and local governments for wildland fire protection;

(6) examine the services that local government firefighters and emergency medical technicians provide and how those services are reimbursed by citizens, insurance companies, and state and federal agencies;

(7) examine the viability, necessity, and jurisdiction of the various local government fire protection entities provided for in state statute; and

(8) determine whether modifications to statutes or state or local policies are warranted to achieve adequacy, consistency, and coordination in local government fire protection and emergency services and in the benefits provided to paid and volunteer firefighters and emergency medical technicians.

BE IT FURTHER RESOLVED, that the committee solicit participation and input from local governments, paid firefighters, volunteer firefighters, representatives of firefighter organizations, representatives of the Montana Public Employees' Retirement Administration, the Department of Natural Resources and Conservation, the Department of Labor and Industry, and any other entity that the committee considers to be appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, or recommendations, be reported to the 63rd Legislature.

Adopted April 27, 2011

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF CERTAIN EXEMPTIONS FROM SUBDIVISION REVIEW.

WHEREAS, The Montana Subdivision and Platting Act provides for the local review of proposed subdivisions; and

WHEREAS, Title 76, chapter 3, part 2, governs circumstances under which divisions of land and certain types of conveyances and land uses are exempt from subdivision review; and

WHEREAS, provisions governing exemptions have been interpreted and applied differently by different local governments; and

WHEREAS, interpretation and application of the statutes governing exemptions have been the subject of litigation; and

WHEREAS, in August 2009, the Montana Attorney General was asked to provide an opinion to clarify the meaning of section 76-3-204, MCA, governing the exemption from subdivision review of the sale, rent, lease, or other conveyance of parts of a building, structure, or other improvement; and

WHEREAS, in March 2010, the Montana Attorney General issued a draft opinion, but a final opinion has yet to be issued; and

WHEREAS, bills introduced during the 62nd Legislature have sought to clarify the statutes governing exemptions for sale, rent, lease, or other conveyance; and

WHEREAS, the statutes governing subdivision exemptions are problematic in different regions of the state for different reasons, and statutory changes that would apply statewide to which all of the concerned parties can agree have proven to be difficult to develop.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the statutes governing exemptions from subdivision review provided in the Montana Subdivision and Platting Act, paying particular attention to the exemption for sale, rent, lease, or other conveyance and to subdivisions created by rent or lease;

(2) review the case law and opinions related to statutes governing exemptions;

(3) review the legislative history of the exemption statutes to determine their genesis and original intent;

(4) collect information on existing local subdivision regulations and how those regulations address exemptions; and

(5) develop findings, recommendations, and, if appropriate, legislation to clarify exemptions from subdivision review, considering the various conditions and needs that exist in different regions of the state.

BE IT FURTHER RESOLVED, that the committee conducting the study solicit participation and input from representatives of the development industry, planning organizations, environmental organizations, and local governments, as well as from citizens who have been impacted by local governments' application of statutes and regulations related to exemptions.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded before September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings or recommendations by the committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following House Rules be adopted:

**RULES OF THE MONTANA
HOUSE OF REPRESENTATIVES**

CHAPTER 1

Administration

H10-10. House officers — definitions. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

(3) (a) "Majority leader" means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) "Majority party" means the party with the most members, subject to subsection (4).

(c) "Minority leader" means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) "Minority party" means the party with the second most members, subject to subsection (4).

(4) If there are an equal number of members of the two parties with the most members, then the majority party is the party of the Speaker and the minority party is the other party with an equal number of members.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the Minority Leader, the Speaker will submit a request for a fiscal note on any bill.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has

the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving pre-session expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Majority Leader. The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

- (1) being the lead speaker for the majority party during floor debates;
- (2) helping the Speaker develop the calendar;
- (3) assisting the Speaker with program development, policy formation, and policy decisions; and
- (4) presiding over the majority caucus meetings; and
- (5) other duties as assigned by the caucus.

H10-60. Majority Whip. The duties of the majority whip may include but are not limited to:

- (1) assisting the majority leader;
- (2) ensuring member attendance;
- (3) counting votes;
- (4) generally communicating the majority position; and
- (5) other duties as assigned by the caucus.

H10-70. Minority Leader. The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

- (1) developing the minority position;
- (2) negotiating with the majority party;
- (3) directing minority caucus activities on the chamber floor;
- (4) leading debate for the minority; and
- (5) other duties as assigned by the caucus.

H10-80. Minority Whip. The major responsibilities for the minority whip may include but are not limited to:

- (1) assisting the minority leader on the floor;
- (2) counting votes;
- (3) ensuring attendance of minority party members; and
- (4) other duties as assigned by the caucus.

H10-90. Employees. (1) The Speaker shall appoint a Chief Clerk and Sergeant-at-Arms and may appoint a Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall employ necessary staff or delegate that function to the employees designated in subsection (1).

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority leaders may each appoint a private secretary.

H10-100. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

- (1) supervise all House employees;
- (2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

H10-110. Duties of Sergeant-at-Arms. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-70;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-120. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-130. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-140. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

- (2) Records of the following proceedings must be entered on the journal:
- (a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);
 - (b) committee reports;
 - (c) messages from the Governor;
 - (d) messages from the Senate;
 - (e) every motion, the name of the representative presenting it, and its disposition;
 - (f) the introduction of legislation in the House;
 - (g) consideration of legislation subsequent to introduction;
 - (h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);
 - (i) roll call votes; and
 - (j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.
- (3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.
- (4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.
- (5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).
- (6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-150. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-160. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier. (See Joint Rule 10-20.)

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, “For what purpose does the member rise?” or “For what purpose does the member seek recognition?” and may then decide if recognition is to be granted. There is no appeal from the Speaker’s or presiding officer’s decision.

H20-20. Questions of order and privilege — appeal — restrictions. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, “Shall the decision of the chairman be sustained?”

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; registered media representatives; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions — appeal. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Lobbying by employees — sanctions. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker may discipline or discharge any House employee violating this prohibition. The Speaker may withdraw the privileges of any House aide or intern violating this prohibition.

H20-70. Papers distributed on desks — exception. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution. This restriction does not apply to material prepared by staff and placed on a representative's desk at the request of the representative.

H20-80. Violation of rules — procedure — appeal. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3
Committees

H30-10. House standing committees — appointments — classification. (1) The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall appoint the chairs, vice chairs, and members to the standing committees.

(2) The standing committees of the House are as follows:

(a) class one committees:

- (i) Appropriations;
- (ii) Business and Labor;
- (iii) Judiciary;
- (iv) State Administration; and
- (v) Taxation;

(b) class two committees:

- (i) Education;
- (ii) federal Relations, Energy, and Telecommunications;
- (iii) Human Services;
- (iv) Natural Resources; and
- (v) Transportation;

(c) class three committees:

- (i) Agriculture;
- (ii) Fish, Wildlife, and Parks; and
- (iii) Local Government; and

(d) on call committees:

- (i) Ethics;
- (ii) Rules; and
- (iii) Legislative Administration.

(3) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(4) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the pre-session caucus provided for in 5-2-201.

(5) There will be six subcommittees of the Committee on Appropriations, Education, General Government and Transportation, Health and Human Services, Natural Resources, Corrections, and Long-Range Planning. Each member serving on the Appropriations Committee must be appointed to at least one of the subcommittees.

(6) The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(7) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive

legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. (1) The principal duties of the chairman of standing or select committees are to:

- (a) preside over meetings of the committee and to put all questions;
- (b) maintain order and decide all questions of order subject to appeal to the committee;
- (c) supervise and direct staff of the committee;
- (d) have the committee secretary keep the official record of the minutes;
- (e) sign reports of the committee and submit them promptly to the Chief Clerk;
- (f) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and
- (g) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. The chairman of the standing committee shall appoint the chairman of the subcommittee.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the majority leader, and the minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings — purpose — notice — minutes. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

- (a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;
- (b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or
- (c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

- (a) the time and place of each meeting of the committee;
- (b) committee members present, excused, or absent;
- (c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;
- (d) all motions and their disposition;
- (e) the results of all votes;
- (f) references to the recording log, sufficient to serve as an index to the original recording; and
- (g) testimony and exhibits submitted in writing.

H30-50. Procedures — absentee or proxy voting — member privileges. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent. The chairman shall attempt to not schedule Senate bills while the Senate is in session.

(3) The committee shall act on each bill in its possession:

- (a) by reporting the bill out of the committee:
 - (i) with the recommendation that it be referred to another committee;
 - (ii) favorably as to passage; or
 - (iii) unfavorably; or
- (b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar. A tie vote in a standing committee on the question of a recommendation to the whole House on a matter before the committee, for example on a question of whether a bill is recommended as “do pass” or “do not pass”, does not result in the matter passing out to the whole House for consideration without recommendation.

(6) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all substantive changes; and
- (d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the House that are formally adopted when the committee report is accepted by the House.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting. Standing and select committees may by a majority vote of the committee authorize members to vote by proxy if absent, while engaged in other legislative business or when excused by the presiding officer of the committee due to illness or an emergency. Authorization for absentee or proxy voting must be reflected in the committee minutes.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy if authorized pursuant to subsection (9), using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony — decorum — time restrictions. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is allowed only at the discretion of the chairman.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt — messages from Senate and elected officials. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading — receipt of Senate legislation. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day — exception. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee, joint select committee, or joint special committee all properly introduced House legislation and transmitted Senate legislation in conformity to the committee jurisdiction.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

H40-80. Rereferral — normal progression. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports — requirement for rejection of adverse committee report. (1) A House standing committee recommendation of “do pass” or “be concurred in” must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of “do not pass” or “be not concurred in” must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a “consent calendar” item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a “consent calendar” item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow “reasonable time” for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas — vote requirements. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading — timing — obverse vote on failed motion — status of amendments — rejection of report — segregation. (1) Legislation returned or withdrawn from committee by motion must be placed on second reading prior to the transmittal deadlines provided for in Joint Rule 40-200 that are applicable to each piece of legislation.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate

legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill “do pass” or “be concurred in” fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill “do not pass” or “be not concurred in”, is considered to have passed. If a motion to recommend that a bill “do not pass” or “be not concurred in” fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill “do pass” or “be concurred in”, is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered pursuant to H50-170 or unless the legislation is rereferred to a committee.

H40-150. Amendments in the Committee of the Whole — timing — official records. (1) All Committee of the Whole amendments must be prepared by the Legislative Services Division and checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members’ desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole — quorum required. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

- (a) recommend passage or nonpassage;
- (b) recommend concurrence or nonconcurrence (Senate amendments to House legislation);
- (c) amend;
- (d) reconsider as provided in H50-170;
- (e) pass consideration;

- (f) call for cloture;
- (g) change the order in which legislation is placed on the agenda; and
- (h) rise, rise and report, or rise and report progress and beg leave to sit again.

(2) Subsections (1)(d) through (1)(f) and (1)(h) are nondebatable but may be amended. Once a motion under subsection (1)(a) or (1)(b) is made, a contrary motion is not in order.

(3) The motions listed in subsection (1) may be made in descending order as listed.

(4) If a quorum of representatives is not present during second reading, the Committee of the Whole may not conduct business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) Except as provided in H40-180, a representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill — sections — amendments. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it must be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing and must be placed on third reading on the legislative day after receipt. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill. (See Joint Rule 40-150.)

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation. (See Joint Rule 40-160.)

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance — excuse — call of the House. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may not conduct business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause during call of the House. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Senate;
- (5) messages from the Governor;
- (6) first reading and commitment of bills;
- (7) second reading of bills;
- (8) third reading of bills;
- (9) motions;
- (10) unfinished business;
- (11) special orders of the day; and
- (12) announcement of committee meetings.

H50-70. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

(4) The majority leader shall make routine procedural motions required to conduct the business of the House.

H50-80. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative

may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-90. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn pursuant to H50-250;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to suspend the rules;

(j) all incidental motions, such as motions relating to voting or of a general procedural nature;

(k) to appeal a call to order;

(l) to question the lack of a quorum pursuant to H50-20; and

(m) to change a vote pursuant to H50-210.

H50-100. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-110. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-120. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn (nondebatable H50-90 and H50-250);

(b) for a call of the House (nondebatable H50-90);

(c) to recess or rise (nondebatable H50-90);

(d) for a question of privilege;

(e) to table (nondebatable H50-90);

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

H50-130. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-140. Dividing a question. Except as provided in H40-180(3), a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed. The request is nondebateable under H50-90. The presiding officer may rule that a question is nondivisible. The ruling of the chair may be appealed as provided in H50-160(15) or (17) and H70-50. For an appeal of a ruling of the presiding officer, the question for the house must be stated as, "Shall the ruling of the chair be upheld?"

H50-150. Previous question — close. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-160. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt pursuant to Article VIII, section 8, of the Montana Constitution (two-thirds);

(5) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths);

(6) a motion to temporarily suspend a joint rule governing the procedure for handling bills pursuant to Joint Rule 60-10(2) (two-thirds).

Members Present and Voting

(1) a motion to override the Governor's veto pursuant to H40-260 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(2) a call of the House with a quorum pursuant to H50-40(1) (one-third);

(3) a motion to lift a call of the House pursuant to H50-30(3) or H50-40(4) (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to H40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee pursuant to H40-90 (three-fifths);

(6) a motion to add legislation to the second or third reading agenda on that day pursuant to H40-130(2) (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(8) a motion to change a vote pursuant to H50-210 (unanimous);

(9) a motion to call for cloture pursuant to H40-170(2) (two-thirds);

(10) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(11) a motion to amend rules pursuant to H70-10(2) or suspend rules pursuant to H70-30 (two-thirds);

(12) a motion to overturn an adverse committee report pursuant to H40-100(2) (three-fifths);

(13) a motion to record a vote pursuant to H50-200(2) (one representative);

(14) a motion to record a vote in the journal (two representatives);

(15) an appeal of the ruling of the presiding officer pursuant to H20-20(1) or H20-80(2) (three representatives);

(16) a motion to speak more than once on a debatable motion pursuant to H50-80(1) (unanimous vote);

(17) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee pursuant to H70-50 (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature).

H50-170. Reconsideration — time restriction. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-180. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-190. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-200. Voting — conflict of interest — present by electronic means. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

(5) A member may be present for a vote by electronic means.

H50-210. Changing a vote — consent required. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-220. Absentee votes — restrictions. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading or on motions specified as present and voting pursuant to H50-70.

H50-230. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-240. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-250. Adjournment sine die. Subject to Article V, section 10(5), of the Montana Constitution, a representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6**Motions**

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

- (1) to adjourn;
- (2) for a call of the House;
- (3) to recess or rise;
- (4) for parliamentary inquiry;
- (5) to table or to take from the table;
- (6) to call for the previous question or for cloture;
- (7) to amend a nondebatable motion;
- (8) to divide a question;
- (9) to suspend the rules; and

(10) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

- (a) to adjourn;
- (b) for a call of the House;
- (c) to recess or rise;
- (d) for a question of privilege;
- (e) to table or take from the table;
- (f) to call for the previous question or cloture;
- (g) to postpone consideration to a day certain;
- (h) to refer or rerefer; and
- (i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

- (a) when the House is voting on another motion;
- (b) when the previous question has been ordered and before the final vote;
- (c) when a member entitled to the floor has not yielded for that purpose; or
- (d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) A motion to adjourn sine die pursuant to H50-250 is subject to Article V, section 10(5), of the Montana Constitution.

(3) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) After a vote on a motion to table is carried or fails, the motion cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was () with a vote tally of ___ for and ___ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules — amendment — report timing. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules — appeal. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

Agriculture: Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

Appropriations: Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

Business and Labor: Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

Education: Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers; school transportation; students; teachers; and vocational education and training.

Ethics: Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

Federal Relations, Energy, and Telecommunications: Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with

sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

Fish, Wildlife, and Parks: Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

Human Services: Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

Judiciary: Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law; privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

Legislative Administration: Interim committees and matters related to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

Local Government: Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

Natural Resources: Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

Rules: House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

State Administration: Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

Taxation: Taxes other than fuel taxes.

Transportation: Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by the Speaker.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chair determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 6, 2011

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA.

WHEREAS, since the activation in 1947 of the Montana Air National Guard, Montanans have flown this nation's premier fighter aircraft from the P-51 to the F-86, F-89, F-102, F-106, F-16, and F-15; and

WHEREAS, in Fiscal Year 2010, the Montana Air National Guard had payroll of \$41,248,479, which supported 1,050 drill-status airmen and soldiers of which 340 members were full-time employees; and

WHEREAS, the Montana Air National Guard has received numerous national awards, including the Air Force Outstanding Unit Award eight times, the Spaatz Trophy, the Hughes Trophy, and the William Tell Award; and

WHEREAS, the Great Falls community is the only community in the nation to be awarded the Fisher Award from the Department of Defense recognizing humanitarian support of the U.S. military; and

WHEREAS, the Montana Air National Guard has honorably served this country with overseas missions four times in the past decade and is currently serving an ALERT mission in Hawaii; and

WHEREAS, the Montana Air National Guard's reenlistment rate is at 94% as compared with the national average of 86%; and

WHEREAS, Great Falls International Airport, which is home to the Montana Air National Guard, has completed environmental impact studies for aircraft noise mitigation and, using taxpayer money, is currently providing noise mitigation to surrounding homes that offsets noise levels of the F-15 and next-generation tactical fighter aircraft; and

WHEREAS, Great Falls International Airport lacks encroachment issues and in times of emergency could use the currently inactive Malmstrom Air Force Base runway for aircraft recovery by reactivating the runway using the Federal

Aviation Administration Military Airplane Program funding, upon approval by the Air Force; and

WHEREAS, the Great Falls International Airport Authority currently leases space to the Montana Air National Guard at the airport for a fee of \$1.00 a year in exchange for the Montana Air National Guard providing all firefighting services to the airport, which includes making available more than \$3 million in firefighting equipment and \$2 million in firefighters' annual payroll; and

WHEREAS, 3 years ago the Montana Air National Guard was tasked with conversion from F-16 aircraft to F-15 aircraft and completed the total conversion at a cost to the taxpayers of nearly \$80 million, including construction of a new Corrosion Control Facility, a new Operations Facility, additional space for munitions storage, and engine shop expansion. Added to that was pilot training at a cost to the public of \$55 million and maintenance training at a cost of \$3 million. The total F-16 to F-15 conversion was accomplished with savings to the taxpayers of more than \$2 million, with operational status achieved 1 year ahead of schedule; and

WHEREAS, the 7,000 square miles provided by the Hays Military Operations Area in northcentral Montana offers a virtually unencumbered airspace unique in its capacity to provide full-spectrum joint, combined, and integrated combat arms military training free of encroachment, electronic warfare constraints, and other restrictions that are present at other areas in the continental United States. This "National Treasure" airspace is particularly well-suited for future Air Superiority Mission training, particularly for next-generation tactical fighter aircraft that require significant airspace for their "Supercruise" capability; and

WHEREAS, Montana in the past has lost military missions and assets with significant impacts to this state's finances and jobs, including the base closure at Glasgow, which resulted in the loss of 16,000 residents; and

WHEREAS, funding to maintain the F-15C/D mission in Great Falls is to end in Fiscal Year 2012, with notification already sent by the Secretary of the Air Force and the federal government that the F-15C/D mission is to be relocated from Great Falls, Montana, to Fresno, California; and

WHEREAS, the decision to relocate was based on an Air Force cost analysis that contains questionable information and analysis and should be reconsidered based on presentation of actual data and accurate analysis.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana House questions the assumptions made and the accuracy of the analysis used in making the decision to relocate the F-15C/D mission out of Great Falls to Fresno, California, and requests a reconsideration of the decision based on further analysis and documentation regarding what truly is in the best interest of Montana and federal taxpayers. The following should be included in the documentation:

- (1) alert status impacts using three aircraft rather than the five aircraft used in the previous business case analysis;
- (2) inclusion of the costs of pilot training for Fresno pilots converting to F-15 aircraft;
- (3) inclusion of the costs for backfilling alert missions during the conversion from F-16 to F-15 missions in Fresno;
- (4) exclusion of costs already incurred in Great Falls for MILCOM (military communications) improvements;

(5) inclusion of the costs of an upcoming 18-month environmental impact study that must be conducted in the Fresno area because of a change in mission;

(6) inclusion of the cost of noise mitigation efforts and activities that will need to be undertaken in Fresno related to F-15 noise issues, including the costs of buying and demolishing homes that already have undergone taxpayer-funded noise mitigation for past missions but that now stand in what are considered unacceptable noise contours for the F-15;

(7) inclusion of the costs of replacing VORTAC and TACAN systems in Fresno; and

(8) inclusion of the costs to fix clear-zone requirements for munitions in Fresno. The current munitions facilities have active commercial taxiways in the explosive potential areas, and resolving this issue may add considerable costs.

BE IT FURTHER RESOLVED, that the Montana House ask the President of the United States, the Secretary of Defense, and the Secretary of the Air Force to stay the decision to relocate the F-15C/D mission to Fresno while a federal investigation is underway regarding a limited number of pilots and commanders within the Fresno Air National Guard and completely reconsider the decision if convictions are obtained based on the investigation.

BE IT FURTHER RESOLVED, that the Montana House protests the projected loss of 200 jobs of drill-status members of the National Guard, which is a projected result of a conversion from the F-15 to a C-27J Spartan aircraft mission. The loss of jobs includes the loss of 75 to 100 full-time National Guard employees, which means a loss of \$9 million to the National Guard payroll a year, not including or considering the loss of spouse or other family member employment in Montana. The financial loss also has a ripple effect on lost revenues from medical payments and economic activities. Further, incorporation of the new C-27J mission is estimated at \$15 million, including a new corrosion control facility and a nose dock to be added to the large hangar building in Great Falls. In addition, pilot training costs of \$20 million and maintenance training costs of \$3 million will be charged to taxpayers. While the new rugged military airlift platform can be configured for troop, medevac, or cargo transport, the C-27J aircraft has no firefighting or fire suppression capability.

BE IT FURTHER RESOLVED, that the Montana House requests reconsideration of the decision made by the Secretary of the Air Force that included expenditures of \$80 million to convert the Air National Guard in Great Falls to the F-15C/D mission but now transfers that mission to Fresno, California, with an additional expenditure of \$40 million projected in Montana to convert and modify these same new facilities for the C-27J mission and a projected need for much greater expenditures to convert and modify F-16 facilities and training for the F-15C/D mission in California. The Montana House further protests the loss of taxpayer dollars spent over the last 3 years on a fighter mission that is to be relocated, particularly during weak economic times, with reduced Department of Defense budgets.

BE IT FURTHER RESOLVED, that the Montana House considers the loss of jobs, loss of local and state revenues, plus the associated diminution of taxes related to loss of the F-15C/D mission, even with the addition of the C-27J mission, to be catastrophic to the economy in Cascade County and to all Montanans.

BE IT FURTHER RESOLVED, that the Montana House recognizes the rich and honorable tradition in Montana of piloting fighter aircraft in defense of our great nation and that Air Force modernization of the F-15C/D aircraft with

Active Electronically Scanned Array radars and new efficient and more powerful engines are likely to allow the F-15C/D aircraft to operate safely and effectively through at least 2025, as determined by full-scale fatigue testing.

BE IT FURTHER RESOLVED, that the national treasure of the Hays Military Operations Area, which supports unencumbered aircraft use, is at risk of being lost if the F-15C/D mission is moved from the State of Montana.

BE IT FURTHER RESOLVED, that the Montana House considers Montana to be a growth area for Unmanned Aircraft System technology, flight, evaluation, and testing as well as an ideal training ground for unmanned aircraft systems and aircraft mitigation and defense training and that Montana's growing unmanned aircraft system industry, if used in conjunction with a retained F-15C/D mission and ground-based radar in Montana, could be key to addressing threats to the airspace and national safety of the United States posed by unmanned aircraft systems.

BE IT FURTHER RESOLVED, that the Montana House is concerned about possible reductions in firefighting services or equipment at the Great Falls International Airport provided by the Montana Air National Guard in exchange for a \$1.00 lease, a service that has been of great value to citizens that fly commercial aircraft into Montana.

BE IT FURTHER RESOLVED, that the Montana House considers issues of encroachment and munitions safety to be nonproblems in Montana but still unresolved in California.

BE IT FURTHER RESOLVED, that the Montana House protests the appearance of a penalty against the Montana Air National Guard and the State of Montana when a fighter mission is transferred out of Montana, after numerous awards, a transition from the F-16 to F-15 fighters under cost and ahead of schedule, intense community support, unmatched reenlistment success and employee retention, and great and effective leadership at the local and state levels, to Fresno where portions of the Air National Guard are under an investigative cloud for fiscal improprieties.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President of the United States Barack Obama, Secretary Robert Gates at the Department of Defense, Senate Majority Leader Harry Reid, Speaker of the House of Representatives John Boehner, Montana's Congressional Delegation, and the Governor, urging them to do all within their authority to retain the F-15C/D mission at the Montana Air National Guard 120th Fighter Wing as a measure of fiscal responsibility and safety for the people of Montana and the United States today and into the future.

Adopted April 13, 2011

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

**JOINT RULES OF THE MONTANA
SENATE AND HOUSE OF REPRESENTATIVES**

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)). The procedure for obtaining consent is contained in Joint Rule 20-10.

10-50. Access of media — registration — decorum — sanctions. (1) Subject to the presiding officer's discretion on issues of decorum and order, a registered media representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

(2) The presiding officer shall authorize the issuance of cards to media representatives to allow floor access, and media representatives holding the cards are subject to placement on the floor by the presiding officer. The presiding officer may delegate enforcement of this rule to the office of the Secretary of the Senate, Chief Clerk of the House, the respective Sergeant-at-Arms, or the Legislative Information Officer. The privilege may be revoked or suspended for a violation of decorum and order as agreed to by the media representative upon application for registration.

(3) Registered media representatives may be subject to seating in designated areas. Overflow access will be in the gallery.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs. (section 2-2-112, MCA)

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited — reporting. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

(3) The Legislative Services Division shall train journal clerks for both houses.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House, who shall give notice to the sponsor of the bill or amendment. The form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing with the Secretary of the Senate or the Chief Clerk of the House by the end of the next legislative day following receipt of the notice. The Senate or House shall vote on whether or not to uphold the objection. If the objection is upheld, the Secretary of the Senate or the Chief Clerk of the House shall notify the Executive Director of the Legislative Services Division, and the engrossing staff shall change the bill to remove the correction or corrections to which the objection was made.

(4) For the purposes of this rule, "engrossing" means placing amendments in a bill.

10-130. Bills — sponsorship — style — format — withdrawal prohibited. (1) A bill must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) backed with a page of substantial material that includes spaces for notations for tracking the progress of the bill; and

(d) introduced. Introduction constitutes the first reading of the bill.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting on bills — constitutional amendments. (1) A bill may not become a law except by vote of the constitutionally required majority of all

the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) This rule does not prevent a committee from tabling a bill proposing an amendment to The Constitution of the State of Montana.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made available to the public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

- (i) amend;
- (ii) recommend passage or nonpassage;
- (iii) recommend concurrence or nonconcurrence; or
- (iv) indefinitely postpone.

(b) The text of all proposed amendments in Committee of the Whole must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) make a daily journal available to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives must be authenticated by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 20**Relations With Other House**

20-10. Consent for adjournment or recess. As required by Article V, section 10(5), of the Montana Constitution, the consent of the other house is required for adjournment or recess for more than 3 calendar days. Consent for adjournment is obtained by having the house wishing to adjourn send a message to the other house and having the receiving house vote favorably on the request. The receiving house shall inform the requesting house of its consent or lack of consent. Consent is not required on or after the 87th legislative day.

CHAPTER 30**Committees**

30-10. Joint committee chair — exception. Except as provided in Joint Rule 30-50 concerning the joint meetings of the Senate Finance and Claims Committee and the House Appropriations Committee, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees — exception. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees — subject matter restrictions. (1) If either house requests a conference committee and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

- (a) acceptance or rejection of each disputed amendment in its entirety; or
- (b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as provided in subsection (1). A free conference committee may discuss and propose amendments to a bill in its entirety and is not confined to a particular amendment. However, a free conference committee is limited to consideration of amendments that are within the scope of the title of the introduced bill.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of general appropriation bills. (1) All general appropriation bills must first be considered by a joint subcommittee composed of designated members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each committee separately.

(2) Joint meetings of the House Appropriations Committee and the Senate Finance and Claims Committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

30-60. Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature. (5-5-227, MCA)

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Economic Affairs Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business, Labor, and Economic Affairs Committee;

(c) Senate Finance and Claims Committee;

(d) House Agriculture Committee;

(e) House Business and Labor Committee;

(f) House Federal Relations, Energy, and Telecommunications Committee;

and

(g) House Appropriations Committee;

(2) Education and Local Government Interim Committee:

(a) Senate Education and Cultural Resources Committee;

(b) Senate Local Government Committee;

(c) Senate Finance and Claims Committee;

(d) House Education Committee;

(e) House Local Government Committee; and

(f) House Appropriations Committee;

(3) Children, Families, Health, and Human Services Interim Committee:

(a) Senate Public Health, Welfare, and Safety Committee;

(b) Senate Finance and Claims Committee;

(c) House Human Services Committee; and

(d) House Appropriations Committee;

(4) Law and Justice Interim Committee:

(a) Senate Judiciary Committee;

(b) Senate Finance and Claims Committee;

(c) House Judiciary Committee; and

(d) House Appropriations Committee;

(5) Revenue and Transportation Interim Committee:

(a) Senate Taxation Committee;

- (b) Senate Highways and Transportation Committee;
- (c) Senate Finance and Claims Committee;
- (d) House Taxation Committee;
- (e) House Transportation Committee; and
- (f) House Appropriations Committee;
- (6) State Administration and Veterans' Affairs Interim Committee:
 - (a) Senate State Administration Committee;
 - (b) Senate Finance and Claims Committee;
 - (c) House State Administration Committee; and
 - (d) House Appropriations Committee;
- (7) Energy and Telecommunications Interim Committee:
 - (a) Senate Energy Committee;
 - (b) House Federal Relations, Energy, and Telecommunications Committee;
 - (c) House Appropriations Committee; and
 - (d) Senate Finance and Claims Committee.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills — introduction in House — feed bill. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed in the joint resolution (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures — drafting priority — agency and committee bills. (1) Prior to a regular session, a person entitled to serve in that session, referred to as a "member", or a legislative committee is entitled to request bill drafting services from the Legislative Services Division. Deadlines for requesting certain types of bills during a legislative session are contained in Joint Rule 40-50.

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least

five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator. The requestor must pick up the bill and sign a receipt indicating delivery of the bill and may either introduce the bill or give the bill to another legislator for introduction.

(d) These limitations on bill and resolution requests do not apply to:

- (i) Code Commissioner bills;
- (ii) a bill or resolution requested by a standing committee; and
- (iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) (a) Except as provided in subsection (2)(b) or this subsection, the staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House.

(b) Except for bill draft requests described in subsection (1)(d)(iii), if a draft bill has not been received by the Legislative Services Division by November 15 for a bill by request of an agency or entity, the draft loses its priority under this rule.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill back must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name, and the chief sponsor may not be changed. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter

was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction of an agency, committee, or individual legislator's bill must occur no later than 5 p.m. on December 15th prior to the convening of a regular legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. (1) The following schedule must be followed for submission of drafting requests.

	Request Deadline
	5:00 P.M.
	Legislative Day
	<hr/>
• General Bills and Resolutions	12
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills and Bills Proposing Referenda	62
• Committee Bills implementing provisions of a general appropriation act	75
• Interim study resolutions	75
• Appropriation Bills	No Deadline
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

(2) Bills and resolutions must be introduced within 2 legislative days after delivery. Failure to comply with the introduction deadline results in the bill draft being canceled.

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

- (a) express desire, opinion, sympathy, or request of the Legislature;

- (b) recognize relations with other governments, sister states, political subdivisions, or similar governmental entities;
- (c) request, but not require, a legislative entity to conduct an interim study;
- (d) adopt, amend, or repeal the joint rules;
- (e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;
- (f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;
- (g) submit a negotiated settlement under section 39-31-305(3), MCA;
- (h) declare or terminate an energy emergency under section 90-4-310, MCA;
- (i) ratify or propose amendments to the United States Constitution;
- (j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana; or
- (k) approve the organization of a new community college district under section 20-15-209, MCA.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill,

shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

- (a) the estimated increase or decrease in revenues or expenditures;
- (b) costs that may be absorbed without additional funds; and
- (c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

- (a) a committee considering the bill;
- (b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note or, if required, an updated fiscal note reflecting committee action.

40-110. Sponsor's fiscal note rebuttal. (1) If a sponsor elects to prepare a sponsor's fiscal note rebuttal pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note rebuttal form to the presiding officer within 4 days of the election. The form must identify the bill number, the sponsor of the bill, the date prepared, the version of the fiscal note being rebutted, the reasons the sponsor disagrees with the fiscal note, the items or assumptions in the fiscal note that the sponsor believes are incorrect, and the sponsor's estimate of the fiscal impact, if an estimate is available.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note rebuttal.

(3) Upon receipt of the completed sponsor's fiscal note rebuttal form, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the form must be identified as a sponsor's fiscal note rebuttal, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal note rebuttals and shall print the completed sponsors' fiscal note rebuttal forms on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title. Introduction constitutes the first reading of the bill.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

- (a) enrolled;
- (b) clerically corrected by the presiding officers, if necessary;
- (c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses — referral — hearing. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

(3) Transmitted bills must be referred to committee and scheduled for hearing.

40-200. Transmittal deadlines — two-thirds vote requirement. (1)(a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, a bill proposing a referendum, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, committee bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, bills proposing referenda, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills and bills proposing referenda must be transmitted to the other house on or before the 71st legislative day.

(ii) Amendments to revenue bills, received from the other house, must be transmitted to the house of origin on or before the 82nd legislative day.

(iii) A revenue bill is one that either increases or decreases revenue by enacting, eliminating, increasing, or decreasing taxes, fees, or fines or by suspending or otherwise changing the allocation of revenues.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day. A fund transfer within the state treasury is not an appropriation for purposes of this section.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the House no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

- (a) bills proposing amendments to The Constitution of the State of Montana;
- (b) bills ratifying proposed amendments to the United States Constitution;
- (c) resolutions; and
- (d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment — procedure.

(1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

- (a) the rules of the Senate;
- (b) the rules of the House of Representatives; and
- (c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

60-40. Tenure of joint rules. The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted January 17, 2011

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO REQUIRE A BALANCED FEDERAL BUDGET EXCEPT IN TIMES OF WAR.

WHEREAS, Article V of the United States Constitution provides methods for proposing amendments; and

WHEREAS, the Legislature of Montana deems an amendment for the United States Constitution requiring a balanced federal budget, except in times of war, necessary for the good of the American people.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana in accordance with the provisions of Article V of the United States Constitution supports an amendment to the United States Constitution to require a balanced federal budget, except in times of war, and to prevent the federal government from appropriating or otherwise spending funds in excess of anticipated revenues.

BE IT FURTHER RESOLVED that a copy of this resolution be dispatched to the Majority Leader of the United States Senate, to the Speaker of the United States House of Representatives, to the Secretaries of the United States and Montana Senates, to the Clerks of the United States and Montana Houses of Representatives, to each member of the Montana congressional delegation, and to the presiding officers of each house of the Legislature of each state in the Union requesting their cooperation.

Adopted April 5, 2011

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE PRESIDENT OF THE UNITED

STATES TO EXPEDITE THE FEDERAL LAND USE DECISION PROCESSES IN MONTANA, TO RECOGNIZE THE IMPORTANCE OF TRADITIONAL MULTIPLE RESOURCE USES ON FEDERAL LANDS, NOT TO IMPOSE RESTRICTIONS ON ADDITIONAL FEDERAL LAND OR MINERALS THAT WOULD PRECLUDE DEVELOPMENT, AND TO SUPPORT FEDERAL LEGISLATION PLACING CHECKS AND BALANCES ON THE PRESIDENT'S POWERS TO DECLARE NATIONAL MONUMENTS.

WHEREAS, Montana is rich in natural resources and abundant agricultural land; and

WHEREAS, responsible use and development of those resources through oil and gas production, coal and hard-rock mining, timber harvesting, farming, and ranching add to the well-being of Montana's rural communities by providing jobs and educational benefits to Montana citizens; and

WHEREAS, federal lands comprise more than 30% of the State of Montana; and

WHEREAS, of the more than 31 million acres of federally owned oil and gas minerals in Montana, over 25% are restricted to prevent development of oil and gas minerals; and

WHEREAS, the State of Montana receives 49% of the royalty revenue from the development of federal minerals in addition to existing production and property taxes and one-quarter of the state's share remains in the county where development occurs to support local government needs and local schools, while the remaining share of federal revenues support programs across Montana, including the university system, offsetting the need for higher taxes and tuition costs on its citizens; and

WHEREAS, the Montana agricultural industry represents a \$2.9 billion annual business, but the economic value to local communities of livestock grazing on federal land is often a secondary consideration in the development of federal land preservation plans for the West; and

WHEREAS, the nature of checkerboard ownership severely impacts adjacent private landowners when federal minerals, grazing, and forest rights are restricted, and these impacts include negative effects on bonus and royalty revenue, forest receipts, and grazing income along with the associated income, property tax revenue, and the local jobs that are produced as a result of these activities and production; and

WHEREAS, it now requires 5 to 10 years to complete a federal resource management plan that has a life expectancy of only 15 to 20 years; and

WHEREAS, protracted delays in updating management plans result in increased planning and capital-carrying costs for producers making development opportunities on federal lands more costly and less competitive; and

WHEREAS, new burdensome onshore leasing policies being implemented by the United States Department of the Interior will remove significantly more federal lands from leasing, add more delay through redundant land use analyses, excessive resource surveys, and increased costs to federal mineral development while failing to improve land management; and

WHEREAS, Department of the Interior Secretary Ken Salazar issued Secretarial Order No. 3310 in December 2010 affirming that protecting wilderness characteristics on public lands is a high priority for the Bureau of Land Management, requiring the Bureau to maintain wilderness resource inventories on a regular and continual basis, and withholding use permits until

land use planning and project level decisions are made to protect wilderness characteristics into perpetuity, which essentially creates more wilderness without the consent of Congress.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana urges the United States Congress and the President of the United States to:

- (1) focus adequate federal resources on funding to complete environmental review processes for federal land use decisions within improved timelines;
- (2) review the new onshore leasing program to ensure that:
 - (a) there are no additional land withdrawals;
 - (b) further time delays will not occur; and
 - (c) mineral resource development of federal lands in Montana will remain competitive; and
- (3) recognize that multiple uses such as forestry, livestock grazing, and mineral development on federal lands are traditional, historic, and beneficial uses that must be protected on an equal footing and incorporated into all federal land management planning.

BE IT FURTHER RESOLVED, that:

- (1) no additional federal lands or minerals should be restricted from development beyond the current 25% of restricted federally owned minerals and that a review of the existing restricted acreage be undertaken to assess whether those restrictions are still necessary;
- (2) the United States Congress should support amendments to the American Antiquities Act of 1906, currently pending in Congressional Committees, that prescribe checks and balances on the President's power to declare national monuments; and
- (3) the United States Congress should nullify Secretarial Order No. 3310.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Majority Leader and Minority Leader of the United States Senate, the Speaker and the Minority Leader of the United States House of Representatives, and the Montana Congressional Delegation.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING OPPOSITION TO FEDERAL LEGISLATION THAT WOULD REDEFINE WHICH WATERS ARE SUBJECT TO THE FEDERAL WATER POLLUTION CONTROL ACT.

WHEREAS, federal legislation has been introduced in the past two sessions of Congress, H.R. 2421 in 2007 and S. 787 in 2009, to clarify which waters are subject to the jurisdiction of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.); and

WHEREAS, the proposed federal legislation has sought to clarify jurisdiction by striking the term "navigable waters" and replacing it with "waters of the United States", defined as "all waters subject to the ebb and flow

of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing”; and

WHEREAS, striking the term “navigable waters” would potentially expand the federal government’s reach beyond what was intended and thereby blur jurisdictional authority to manage and regulate water resources within state and local government jurisdictions; and

WHEREAS, given the ambiguity of the jurisdictional reach in past proposed Congressional legislation, the implementation of this kind of proposal may lead to increased litigation and uncertainty among public and private stakeholders, including homeowners, farmers, water districts, and state and federal agencies, among others.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 62nd Legislature adamantly opposes any Congressional legislation that would redefine which waters are subject to the Federal Water Pollution Control Act and urges Congress not to propose, introduce, or enact any legislation to that effect in the future.

(2) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Majority Leader of the United States Senate, and the Speaker of the United States House of Representatives.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS AND THE COMMISSIONER OF HIGHER EDUCATION TO STUDY THE GROWING DIVIDE BETWEEN RURAL AND URBAN COMMUNITIES AND PRESENT THE FINDINGS AND THE RECOMMENDATIONS OF THE STUDY TO THE LEGISLATURE’S EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE.

WHEREAS, sustainable economic development in Montana is jeopardized by a growing divide between Montana’s rural and urban communities; and

WHEREAS, rural communities face increasing economic challenges due to a declining population and limited access to technology, capital, health care, educational resources, and agricultural market services; and

WHEREAS, urban communities are dependent on rural areas to meet increasing demands for energy, agricultural products, timber, clean water, hunting, fishing, and recreation; and

WHEREAS, urban and rural development associated with inadequate planning continues to shrink the rural areas available for agricultural production, energy production, and natural resource development required to meet increasing demand; and

WHEREAS, rural and urban communities are interdependent and should share a common interest in and an aspiration for a sustainable economic future for Montana; and

WHEREAS, Montana needs to develop solutions to the rural and urban divide that can be reached only through partnership and collaboration based on

an integrated community vision that connects rather than divides Montana's rural and urban communities; and

WHEREAS, the Montana University System has the knowledge base, research facilities, and outreach capabilities to provide a leadership role in promoting research, analysis, and dialog on these issues; and

WHEREAS, if Montana establishes a successful ongoing approach to examining rural and urban challenges and developing integrated solutions, Montana's approach may serve as a model to assist other states in finding a common vision for improved quality of life for both rural and urban communities and a more sustainable economic future.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents and the Commissioner of Higher Education are urged to oversee and direct a study that:

- (1) examines the nature of the rural and urban divide in Montana;
- (2) requires the collection and analysis of data concerning Montana's rural and urban demographics that will focus on agricultural and livestock production capabilities, business and industrial growth, workforce needs, food and water consumption, energy consumption and production capabilities, natural resource consumption and development capabilities, access to health care and educational resources, recreation and hunting opportunities, and other rural and urban issues;
- (3) brings urban and rural interest groups, stakeholders, and policy analysts together to share information and discuss ways to build partnerships and to develop action plans for moving Montana toward a more inclusive format in rural and urban affairs; and
- (4) explores the feasibility of conducting a pilot project and establishing and funding a rural-urban institute as part of the Montana University System that can provide ongoing research and analysis of rural and urban interdependence and facilitate ongoing strategic planning in the public and private sectors to overcome the rural-urban divide and move Montana forward as one Montana.

BE IT FURTHER RESOLVED that the findings and recommendations of the study be presented to the Legislature's Education and Local Government Interim Committee before July 1, 2012.

Adopted April 6, 2011

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RELATING TO SUPPORT FOR THE PARENTAL RIGHTS AMENDMENT; AND URGING THE MEMBERS OF THE UNITED STATES CONGRESS TO SUBMIT THE PARENTAL RIGHTS AMENDMENT TO THE STATES FOR RATIFICATION.

WHEREAS, the right of parents to direct the upbringing and education of their children is a fundamental right protected by the Constitution of the United States and the Constitution of the State of Montana; and

WHEREAS, our nation has historically relied on parents, first and foremost, to meet the real and constant needs of children; and

WHEREAS, the interests of children are best served when parents are free to make child rearing decisions about education, religion, and other areas of a child's life without state interference; and

WHEREAS, in 1972, the United States Supreme Court, in *Wisconsin v. Yoder*, 406 U.S. 205, held that the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"; and

WHEREAS, in 2000, in *Troxel v. Granville*, 530 U.S. 57, the United States Supreme Court produced six different opinions on the nature and enforceability of parental rights under the Constitution of the United States that have created confusion and ambiguity about the fundamental nature of parental rights in the laws and society of our nation and in the states; and

WHEREAS, United States Senator James DeMint of South Carolina and United States Representative Peter Hoekstra of Michigan have introduced in the United States Congress an amendment to the United States Constitution providing that the liberty of parents to direct the upbringing and education of their children is a fundamental right that may not be infringed upon by the United States or any state without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served; and

WHEREAS, this amendment will add explicit text to the Constitution of the United States to protect in perpetuity the rights of parents as they are now enjoyed without substantive change to current federal or state laws relating to these rights; and

WHEREAS, the enumeration of these rights in the text of the Constitution will preserve them from being infringed upon by the shifting ideologies and interpretations of the United States Supreme Court or by treaty or international law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature affirms the Parental Rights Amendment to the United States Constitution as referenced in this resolution and as presented to the United States Congress by Senator James DeMint and Representative Peter Hoekstra.

BE IT FURTHER RESOLVED that the Montana Legislature urges the members of the United States Congress to submit the Parental Rights Amendment to the states for ratification.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of the Montana Congressional Delegation, all other members of the United States Congress, and the presiding officers of the legislatures of each of the other 49 states.

Adopted March 11, 2011

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING EFFORTS BY THE ENVIRONMENTAL PROTECTION AGENCY TO USE EXISTING FEDERAL LAWS TO REGULATE GREENHOUSE GAS EMISSIONS.

WHEREAS, the U.S. Environmental Protection Agency has proposed or is proposing numerous new regulations, particularly in the area of air quality and the regulation of greenhouse gases, that could have major detrimental effects on the economy, jobs, and U.S. competitiveness in worldwide markets; and

WHEREAS, federal laws, such as the Clean Air Act, were never intended or designed to regulate greenhouse gases; and

WHEREAS, Montana's two U.S. senators have gone on record that Congress, not just the EPA, is the appropriate venue to consider greenhouse gas regulations; and

WHEREAS, concern is growing that with cap-and-trade legislation having failed in Congress, the EPA is attempting to obtain some of the same results through the adoption of regulations; and

WHEREAS, neither the EPA nor President Obama's administration has undertaken any comprehensive study of what the cumulative effect of all of this new regulatory activity will be on the economy, jobs, and competitiveness; and

WHEREAS, state agencies are routinely required to identify the costs of their regulations and to justify those costs in light of the benefits; and

WHEREAS, since the EPA has identified "taking action on climate change and improving air quality" as its first strategic goal for the 2011-2015 time period, the EPA should be required to identify the specific actions it intends to take to achieve these goals and to assess the total cost of all these actions together; and

WHEREAS, the Montana Legislature supports continuing improvements in the quality of the nation's air and believes that those improvements can be made in a sensible fashion without damaging the economy, as long as there is a full understanding of the cost and benefits of the regulations at issue; and

WHEREAS, the primary goal of government at the present time must be to promote economic recovery and to foster a stable and predictable business environment that will lead to the creation of jobs; and

WHEREAS, Montana is the seventh largest user of energy per capita but only ranks 49th, second to last, in take-home pay; and

WHEREAS, Montana possesses vast reserves of proven, low-cost energy, including coal, natural gas, and oil, that creates high-paying jobs; and

WHEREAS, 40% of the nation's coal used for electricity generation comes from the Powder River Basin states of Montana and Wyoming; and

WHEREAS, more than 70% of Montana's coal production is exported to generate low-cost electricity used in homes, small businesses, and manufacturing; and

WHEREAS, more than 1,100 families depend on the good-paying jobs the Montana coal industry provides; and

WHEREAS, the state of Montana receives more than \$70 million in direct tax benefits annually from coal industries; and

WHEREAS, the oil and gas industry is responsible for 4,500 direct jobs in Montana, and another 7,500 indirect jobs; and

WHEREAS, production tax revenue alone accounts for more than \$220 million that is distributed to state and local government and schools across the state; and

WHEREAS, the total economic impact of the petroleum industry in Montana is \$9 billion; and

WHEREAS, Montana's four refineries provide more than 1,000 jobs with an average wage of over \$90,000; and

WHEREAS, environmental improvement is only possible in a society that generates wealth.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 62nd Legislature requests that the United States Congress consider:

(1) adopting legislation prohibiting the EPA from utilizing existing federal laws to regulate greenhouse gas emissions, including, if necessary, defunding the EPA's greenhouse gas regulatory activities;

(2) imposing a moratorium on promulgation of any new air quality regulation by the EPA by any means necessary, except to directly address an imminent health or environmental emergency, for a period of at least 2 years; and

(3) requiring President Obama's administration to undertake a study identifying all regulatory activity that the EPA intends to undertake in furtherance of its goal of "taking action on climate change and improving air quality" and specify the cumulative effect of all of these regulations on the economy, jobs, and American economic competitiveness. This study should be a multiagency study drawing on the expertise of the EPA, agencies, and departments having expertise in and responsibility for the economy and the electric system and should provide an objective cost-benefit analysis of all of the EPA's current and planned regulation.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of Montana's Congressional Delegation, and the Administrator of the Environmental Protection Agency.

Adopted April 1, 2011

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA BOARD OF REGENTS OF HIGHER EDUCATION TO REQUIRE ONGOING POSTTENURE REVIEW FOR MONTANA UNIVERSITY TEACHERS; URGING THE BOARD OF REGENTS TO REQUIRE UNIVERSITY PRESIDENTS OR CHANCELLORS TO REPORT TO THE BOARD OF REGENTS ON THE POSTTENURE REVIEW PROCESS AT THEIR INSTITUTIONS; URGING THE BOARD OF REGENTS TO STUDY THE ADVANTAGES AND DISADVANTAGES OF POSTTENURE REVIEW; AND REQUESTING THE BOARD OF REGENTS TO REPORT TO THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE ON THE FINDINGS OF THE STUDY.

WHEREAS, it is in the best interest of the state to attract, retain, develop, and support high-quality Montana university teachers; and

WHEREAS, an award of tenure is necessary for attracting, retaining, developing, and supporting high-quality university teachers; and

WHEREAS, there is a direct relationship between a motivated and passionate teacher and a successful student base; and

WHEREAS, it is critical that there be performance benchmarks, quality classroom preparation, and student feedback to ensure that a tenured teacher maintains high-quality standards; and

WHEREAS, the Montana Board of Regents of Higher Education is uniquely positioned to adopt, implement, and oversee a tenure review process; and

WHEREAS, it is the desire of the Legislature to ensure that there is a review process for tenured teachers to maintain the high-quality education for which the Montana University System is renowned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Regents and the Commissioner of Higher Education are urged to oversee and direct the president or chancellor of each of the units of the Montana University System to institute a posttenure review process for all tenured faculty.

(2) That the Board of Regents is urged to direct the university presidents or chancellors to establish programs designed to assist faculty members in enhancing their teaching skills.

(3) That the Board of Regents is urged to adopt and implement a posttenure review process in which a tenured faculty member is subject to review every 5 years based on a review of several factors, including the following:

(a) an evaluation of the faculty member's teaching;

(b) an evaluation of the faculty member's research and scholarly output; and

(c) an evaluation of the contributions made by the faculty member in the area of public service to the institution and the community.

(4) That the Board of Regents is urged to ensure that a peer review is afforded the faculty member and that student evaluations are considered in the evaluation of the tenured faculty member's teaching.

(5) That, in the event that a tenured faculty member receives an unfavorable evaluation in the area of the faculty member's teaching, research, or community service, the Board of Regents is urged to include in the posttenure review process:

(a) a standard probation and reevaluation period; and

(b) loss of tenure if, during the subsequent probation and reevaluation period, the faculty member fails to demonstrate improvement in the area of teaching.

(6) That the Board of Regents is encouraged to require the university presidents or chancellors to file an annual report with the Board of Regents on the posttenure review process at the institution.

(7) That the Board of Regents is urged to study the options, advantages, and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.

BE IT FURTHER RESOLVED, that the Board of Regents is requested to report to the Education and Local Government Interim Committee no later than August 15, 2012, as to the implementation and progress of the posttenure review process.

Adopted April 8, 2011

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEVELOPMENT AND PROMOTION OF POLICIES THAT PROMOTE THE RESPONSIBLE DEVELOPMENT OF OIL AND GAS LEASES ON FEDERAL LANDS.

WHEREAS, there are 32 million acres of oil and gas minerals in Montana that are owned by the American public and administered by the Bureau of Land Management (BLM); and

WHEREAS, the federal government does not develop oil and gas itself, but instead leases development rights to private industry. Leasing demand is a function of market conditions and national energy consumption; and

WHEREAS, the decline in federal leasing of minerals makes it more difficult for companies to develop oil and gas in an environmentally responsible manner, harms economies throughout the state, and decreases state and local government revenue; and

WHEREAS, this policy puts Montana at a distinct disadvantage compared to other regions of the country that do not have significant federal lands, acting as a catalyst that will cause energy jobs and economic activity to migrate to those other regions; and

WHEREAS, policies that further slow leasing and permitting will discourage companies from operating in Montana and the state will not experience the rebound in jobs and economic growth that it otherwise would as the American economy recovers; and

WHEREAS, the oil and gas industry in Montana is a valued partner in supplying oil and natural gas resources that enhance American energy security.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Department of the Interior consider the negative impact that oil and gas leasing and permitting policies may have on Montana's economy, the jobs of its citizens, and the state and local government revenue that funds vital services such as schools, roads, and law enforcement.

(2) That the United States Department of the Interior develop policies that promote the responsible development of Montana's public lands.

(3) That the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate, the secretary of the United States Department of the Interior, and each member of the Montana Congressional Delegation.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING IMPROVED COMMUNICATION BY THE DEPARTMENT OF LIVESTOCK WITH PRIVATE LANDOWNERS AFFECTED BY BISON CONTROL ACTIVITIES RELATED TO THE INTERAGENCY BISON MANAGEMENT PLAN.

WHEREAS, state and federal agencies have developed the Interagency Bison Management Plan to guide the management of bison and brucellosis in and around Yellowstone National Park; and

WHEREAS, the interagency plan occasionally requires the Montana Department of Livestock to enter private land as part of its efforts to control the spread of disease to livestock and humans; and

WHEREAS, Department of Livestock activities related to bison control have the potential to create conflict with private landowners; and

WHEREAS, the Department of Livestock's bison control activities would create less conflict if better coordination and communication existed between the department and private landowners.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana encourages the Montana Department of Livestock to improve its level of communication and coordination with affected private landowners, including providing notification of bison control activities occurring on private land.

BE IT FURTHER RESOLVED, that the Legislature does not intend for the improved communication and coordination efforts to impede the Department of Livestock in carrying out its obligation to prevent and manage animal disease.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Governor, the members of the Board of Livestock, and the executive officer of the Board of Livestock.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF BONDING REQUIREMENTS RELATED TO AGRICULTURAL COMMODITIES.

WHEREAS, Montana's agricultural industry for grain, oilseed crops, and other crops is participating in an increasingly complex global economy with new customers, new products, and new markets; and

WHEREAS, Montana agricultural commodities produced and delivered to buyers in Montana continue to increase in value, as does the value of undelivered, unsettled, or outstanding commodity contracts; and

WHEREAS, grain buyers both large and small are entering Montana grain markets for the first time; and

WHEREAS, the existing bonding requirements for these transactions were established in the past under the premise of a dissimilar and much smaller grain economy; and

WHEREAS, Montana agricultural commodity producers may be at risk financially because of archaic bonding requirements; and

WHEREAS, risk may also be attached to commodities not in immediate possession of a producer or a public warehouse, such as undelivered agricultural commodities or those in transit to a third party; and

WHEREAS, it is in the interest of the Montana agricultural commodities industry to quantify the real and potential shortfall in bonding requirements as well as the cost of adequate bonding; and

WHEREAS, responsible adjustments to the agricultural commodities industry bonding requirements and law will require an accurate assessment of outstanding liabilities incurred in the sale and trade of Montana crops.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the current bonding requirements relevant to the Montana agricultural commodities industry to determine:

(1) how the current bonding requirements affect the stakeholders in the agricultural commodities industry from the producers to the public warehouses, from the small independent producer or elevator to the large, multinational producer or warehouse;

(2) what bonding levels might be adequate and what mechanisms may be needed to set bonding limits for the various stakeholders to reflect asset evaluation;

(3) what amount of capital is appropriate and necessary to offset the risk involved; and

(4) bonding costs to the grain industry in the event that increased bonding levels would be warranted, taking into consideration a representative sampling of costs for both large and small commodity dealers.

BE IT FURTHER RESOLVED, that the study committee and staff are encouraged to work with the Department of Agriculture to incorporate the studies and reports that the department has collected regarding current bonding requirements and information from other states.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 26, 2011

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO ANALYZE THE SYSTEM OF VALUING CENTRALLY ASSESSED PROPERTIES AND INDUSTRIAL COMPANIES ASSESSED ANNUALLY BY THE DEPARTMENT OF REVENUE; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE.

WHEREAS, the Legislature has heard concerns about centrally assessed property and large industrial facility taxation; and

WHEREAS, predictability and stability of property valuation will improve the business investment climate for Montana businesses.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the statutory authority identifying the type of properties that should be assessed by the central office of the department of revenue and not by local county employees of the department. The following must be reviewed:

(a) the history and changes in the industry for properties that are currently designated as being centrally assessed; and

(b) the statutory authority regarding assessment of large industrial properties, properties that may involve characteristics or complexity that require specialized assessment but are not classic unitary businesses, and other types of property that different taxing jurisdictions have considered appropriate for being assessed centrally and locally;

(2) analyze whether there should be a relationship between a property's tax classification and the method used for assessment of that property;

(3) analyze whether property owned by a particular type of business should be centrally or locally assessed;

(4) analyze whether assessment directly by the state or local assessment should be based on separate types of property being assessed;

(5) analyze whether methods used in determining market value should differ based upon whether the assessment is determined centrally or locally;

(6) analyze how exempt intangible personal property can and should be removed from a centrally assessed unitary valuation;

(7) review the appropriateness of the percentages to deduct intangible personal property from the cost, income, and market indicators of value specified in the Administrative Rules of Montana; and

(8) any other matter relating to central assessment, including equalization with other classes of property, that the committee considers appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation, review requirements, and recommendations, be concluded before September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 63rd Legislature.

Adopted April 18, 2011

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF HEALTH CARE WORKFORCE NEEDS AND STRATEGIES FOR MEETING THOSE NEEDS.

WHEREAS, the health and welfare of all Montanans depends on their access to health care providers and health care services; and

WHEREAS, a well-trained and well-educated health care workforce is critical to the health and well-being of Montanans and the Montana economy; and

WHEREAS, 54 of Montana's 56 counties are designated in whole or in part as health professional shortage areas, medically underserved areas, or medically underserved populations; and

WHEREAS, the population of Montana is projected to grow 21% between 2000 and 2020, resulting in a corresponding increase in the demand for health care professionals; and

WHEREAS, access to medical treatment is threatened in many communities, particularly those in rural and frontier areas, due to a lack of health care providers, such as dentists, physicians, physician assistants, and advanced practice registered nurses; and

WHEREAS, the Montana physician workforce ranks second nationwide in the number of physicians over age 65, less than 25% of physicians practice outside of the state's 7 largest cities, and 8 of the 56 counties have no physician; and

WHEREAS, the U.S. Health Resources and Services Administration projects that Montana will have 3,000 fewer registered nurses than needed by 2020; and

WHEREAS, many communities, especially those in rural and frontier areas, also report a shortage of and an aging workforce of allied health care professionals, including laboratory technicians, medical technicians, and other health professionals; and

WHEREAS, the health care sector provides highly paid, highly skilled careers in large and small communities across the state and is critically important to the state's economic growth; and

WHEREAS, the state lacks a comprehensive strategy for developing the supply of health care professionals necessary to meet the future medical needs of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to:

(1) examine Montana's health care workforce needs by:

(a) reviewing existing analyses of Montana's current health care workforce;

(b) reviewing projections related to future health care workforce trends and needs; and

(c) monitoring the ongoing work and final recommendations of the state entities that have received a federal Health Care Workforce Development Planning Grant to consider the state's long-term needs for health care workers;

(2) in order to ensure that the supply of health care professionals and health care workers is adequate to meet the projected demand, recommend a comprehensive 10-year plan for expanding health care professions and health care workforce training programs in a manner that incorporates the recommendations of state and national entities that have been reviewing and considering workforce needs; and

(3) develop legislative proposals to begin implementation of the 10-year health care workforce development plan for consideration by the 63rd Montana Legislature.

BE IT FURTHER RESOLVED, that the study consider and that the 10-year health care workforce development plan address ways to:

- (1) develop public-private partnerships to expand workforce training opportunities;
- (2) expand health care workforce training opportunities through the Montana University System;
- (3) expand distance-learning opportunities for persons not located near a training program;
- (4) expand the number of primary care residency program training positions in Montana, in recognition of the fact that nearly 70% of medical residents practice near the location of their residency program;
- (5) increase participation in multistate medical education programs, including methods to encourage Montana medical students who take part in those programs to return to Montana to practice medicine;
- (6) create a loan repayment program for allied health care professionals similar to the Montana Rural Physician Incentive Program;
- (7) expand training and recruitment programs for oral health professionals; and
- (8) further the recommendations of the Initiative on the Future of Nursing, undertaken jointly by the Robert Wood Johnson Foundation and Institute of Medicine, to address nursing workforce issues of supply, recruitment, and retention.

BE IT FURTHER RESOLVED, that the study involve or gather input from representatives of health care provider and consumer organizations, the Montana University System, the Montana Office of Rural Health, the Montana Area Health Education Centers, the Office of Public Instruction, the Department of Labor and Industry's health care licensure boards, and other interested parties.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 18, 2011

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF WAYS TO MAKE THE MONTANA MEDICAID PROGRAM MORE COST EFFECTIVE AND EFFICIENT.

WHEREAS, the Montana Medicaid program provides essential health care services for nearly 103,000 aged, blind, disabled, or low-income Montanans as of December 2010; and

WHEREAS, the number of Montanans qualifying for the Medicaid program has increased substantially in the past 2 years; and

WHEREAS, the Medicaid program accounts for 23% of the state's total budget and 14% of general fund spending; and

WHEREAS, Medicaid spending is projected to continue increasing in the future; and

WHEREAS, the anticipated growth in Medicaid expenditures and the projected expansion of the Medicaid population in 2014 as provided for in the Patient Protection and Affordable Care Act make it imperative that public policymakers identify ways to improve the cost-effectiveness and efficiency of the Medicaid program; and

WHEREAS, the current trends in Montana's Medicaid cost growth are unsustainable in the current budget environment; and

WHEREAS, approximately 30 million individuals who are enrolled in Medicaid and the Children's Health Insurance Program are covered by capitated coordinated care programs; and

WHEREAS, 36 states currently have capitated coordinated care programs; and

WHEREAS, three additional states are planning on moving from fee-for-service Medicaid delivery systems to capitated coordinated care delivery systems; and

WHEREAS, capitated coordinated care programs have been successful in both rural as well as urban areas; and

WHEREAS, capitated coordinated care programs bring budget predictability to the state; and

WHEREAS, previous studies have shown capitated coordinated care program savings ranging from 0.5% to 20%, as well as a decline in the annual Medicaid cost trend; and

WHEREAS, capitated coordinated care programs improve health outcomes and have reduced out-of-pocket costs for Medicaid beneficiaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study Montana's Medicaid program and make recommendations on ways to improve the efficiency of the program while maintaining the quality of the services it offers.

BE IT FURTHER RESOLVED, that the study:

(1) identify the Medicaid services required under federal law and those that Montana may choose to offer, as well as the costs of providing the services;

(2) identify services or administrative activities that may be privatized and the costs or cost savings of privatizing the services or activities;

(3) identify strategies that other rural states have used to improve the cost-effectiveness of their Medicaid programs;

(4) review the effect that strategies used in other states:

(a) have had on costs, access to care, and quality of care in those states; and

(b) may have in Montana if put into effect; and

(5) review financing options for the expansion of the Medicaid program that is expected to occur under changes in federal law.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Department of Public Health and Human Services, the Montana Hospital Association, the Montana Medical Association, the Montana Health Care Association, organizations representing Medicaid recipients, members of the public, and other agencies and organizations as appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 26, 2011

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR AN INTERIM STUDY ON THE EXEMPTION OF NONPROFIT CORPORATIONS OR ORGANIZATIONS FROM PROPERTY TAXES AND OTHER TAXES.

WHEREAS, the number of nonprofit corporations or organizations in Montana has continued to increase; and

WHEREAS, nonprofit corporations or organizations vary in function from some that are purely charitable and operate solely through the receipt of donations and some that function based upon receipt of fees for services or government appropriations and contracts; and

WHEREAS, under Montana law, nonprofit corporations or organizations are largely exempt from the payment of income taxes and property taxes that are paid by for-profit organizations that may provide the same or similar services; and

WHEREAS, Montana nonprofit corporations or organizations are increasingly purchasing office buildings and other real estate investments and removing them from the property tax rolls, thereby shifting the property tax burden to the small businesses and homeowners who remain on the tax rolls under the operation of section 15-10-420, MCA, that allows the local government taxing jurisdiction to levy the same dollars from fewer taxpayers; and

WHEREAS, in rural Montana counties, there is an increasing pattern of land purchases by nonprofit corporations or organizations that could result in the removal of productive agricultural lands from production, from supporting the local dominant agricultural economy, and from the tax rolls.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or committees, pursuant to section 5-5-217, MCA, to study the following:

(1) the valuation of property in each of Montana's seven most populous counties that does not appear on the tax rolls because of the nonprofit exemption from property taxes in those counties and in each city in those counties;

(2) the amount of business equipment in each of Montana's counties that has been removed from the tax rolls because of the nonprofit exemption from property tax;

(3) the amount of tax shifting that has occurred because nonprofit corporations or organizations have acquired property that has been removed from the tax rolls;

(4) the appropriateness of allowing nonprofit corporations or organizations to acquire investment property not related to their charitable goals and to pay taxes at a reduced rate compared to for-profit investors;

(5) the effects of allowing private parks that were created to comply with subdivision standards and that are not open to the general public to be removed from the tax rolls;

(6) the impact of competition by nonprofit corporations or organizations offering essentially the same services as for-profit entities and the competitive advantage that lack of income tax and property tax provides; for example, nonprofit medical clinics owned by nonprofit hospitals compared to medical clinics owned by physicians and health clubs owned by colleges or hospitals compared to investor-owned health clubs;

(7) the impact of limiting income tax exemptions and property tax exemptions to reflect the percentage of gross receipts of the nonprofit corporation or organization that represent charitable donations compared to the percentage of fee-for-service or government appropriations or contracts;

(8) how the other 49 states treat nonprofit corporations or organizations for income tax and property tax purposes and how they differentiate from for-profit and purely charitable organizations;

(9) the nonprofit corporations or organizations that own farmland or rangeland for purposes of preserving unique historical, archaeological, or environmental resources;

(10) the effects that nonprofit land ownership has had on the local tax base and whether taxes are paid on that land and how that compares to similar land classifications in the area;

(11) legal restrictions or limitations on nonprofit land ownership in other states;

(12) whether services provided by nonprofit corporations or organizations justify the property tax exemptions and state income tax exemptions or reduced tax rates that they receive.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the studies, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING INTERIM MONITORING ACTIVITIES BY LEGISLATIVE ADMINISTRATIVE AND INTERIM COMMITTEES AS RECOMMENDED BY THE JOINT SUBCOMMITTEES OF THE HOUSE APPROPRIATIONS AND SENATE FINANCE AND CLAIMS STANDING COMMITTEES.

WHEREAS, appropriations power is vested in the Legislature by the Montana Constitution; and

WHEREAS, the act of appropriating funds is one of the most significant expressions of legislative policy; and

WHEREAS, the 2011 Legislature evaluated critical goals for agency operations as part of the appropriations process; and

WHEREAS, interim legislative committees are charged with program evaluation and monitoring functions for specific state agencies; and

WHEREAS, performance monitoring has the potential to communicate what is received in return for the investment of tax dollars; and

WHEREAS, through performance monitoring, both agency personnel and policymakers may gain understanding of program effectiveness instead of focusing on the preservation of existing programs and associated spending levels; and

WHEREAS, performance monitoring helps explain the results of previous legislative funding decisions and aids in priority setting; and

WHEREAS, performance monitoring helps estimate and justify the potential consequences of new funding decisions;

WHEREAS, regular performance monitoring before and during budget deliberations encourages deeper legislative understanding of agency activities and may even garner support for them; and

WHEREAS, effective performance monitoring is a partnership between the Executive, Judicial, and Legislative Branches of state government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee, in cooperation with the Legislative Council, be requested to recommend to appropriate administrative or interim committees, pursuant to section 5-5-217, MCA, interim monitoring activities as recommended by the Joint Subcommittees on Appropriations.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation requests interim monitoring of the Department of Public Health and Human Services in regard to the following:

(1) implementation of broad-based budget reductions and the effect on operations;

(2) implementation of Healthy Montana Kids;

(3) evaluation of the impacts of the economy and recession on workload and programs;

(4) implementation of components of federal health insurance reform including:

(a) integration of Medicaid eligibility determination in the health insurance exchange design;

(b) evaluation of the potential for a single system to determine Medicaid eligibility; and

(c) outlining components and cost of Medicaid eligibility expansion for consideration by the 2013 Legislature;

(5) within the Human and Community Services Division:

(a) implementation of the broad-based budget and personal services reductions and related effects on the division; and

(b) monitoring the caseload growth in SNAP, Medicaid, TANF, LIEAP, and child care and the number of children entering and exiting foster care; and

(6) monitoring the impact of the implementation of the components of federal health insurance reform on the Technology Services Division.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Department of Fish, Wildlife, and Parks requests followup by the Environmental Quality Council of agency goals and objectives for the:

- (1) migratory bird program;
- (2) upland game bird program; and
- (3) brucellosis in elk study.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Department of Environmental Quality requests that the Environmental Quality Council review, on at least an annual basis, the cleanup progress at the KRY site and the progress toward petroleum tank site closures.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Judicial Branch requests that the Legislative Finance Committee monitor the Court Help Program and the Water Court.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Department of Justice requests that the Legislative Finance Committee monitor the vehicle insurance verification system and the Motor Vehicle Division.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Office of the Public Defender and the Department of Corrections requests monitoring of the average daily population of secure assisted living beds.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation requests interim monitoring of K-12 education and the progress on:

(1) implementing state actions to create a culture of effective data use and to improve student performance; and

(2) goals and objectives on K-12, higher education, and P-20, including the role and mission of the Education and Local Government Interim Committee, which absorbed the Joint Committee on Postsecondary Education Policy and Budget that was repealed in 1999.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation requests interim monitoring of the Preservation Review Board on the status and maintenance needs of agency heritage properties if Senate Bill No. 3 is passed and approved.

BE IT FURTHER RESOLVED, that the Joint Subcommittees also discussed the following for interim monitoring:

(1) the Department of Public Health and Human Services and the department's activities in regard to:

(a) House Bills No. 130, No. 131, and No. 132 from the 2009 legislative session;

(b) children's mental health providers in the Disability Services Division;

(c) the autism waiver in the Disability Services Division;

(2) the State Auditor's Office and Insure Montana;

(3) the Department of Administration:

(a) the impact of the Patient Protection and Affordable Care Act on the state employee group plan with respect to:

- (i) annual evaluation of whether to maintain grandfathered plan status;
- (ii) receipt and use of early retiree reimbursements; and
- (iii) constraints on benefit design and premium and cost share decisions; and
- (b) efforts to reduce postage, printing, and warrant costs by encouraging vendors and state employees to use electronic funds transfers and advices;
- (4) the Department of Revenue and the implementation and efficiencies gained from the scanning and imaging project; and
- (5) the Department of Agriculture and the aquatic nuisance species benchmarks and report.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 20, 2011

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF A MEDICAID WAIVER FOR SERVICES PROVIDED TO CHILDREN WITH DEVELOPMENTAL DISABILITIES.

WHEREAS, providers of Medicaid-funded home and community-based services for children with developmental disabilities have operated individualized, accountable, and fiscally efficient services through a Medicaid waiver since 1985; and

WHEREAS, these services prevent the need for more restrictive and more costly out-of-home care for children with developmental disabilities; and

WHEREAS, community service providers use a model of service that includes parents and legal guardians as primary decisionmakers regarding the care and services provided to their children and that allows other stakeholders to be involved in delivering individualized, flexible services designed to meet the dynamic needs of children and families in their home and community environments; and

WHEREAS, community service providers employ professional, certified, and qualified staff members who use the latest evidenced-based intervention strategies and have received highly specialized training in early intervention techniques and in human development; and

WHEREAS, the Medicaid waiver used to provide services to children is primarily designed for adults living in 24-hour residential settings; and

WHEREAS, the model for adult services requires documentation and quality assurance measures that are time-intensive and more costly than needed for family-based services for children, resulting in significant administrative costs for those services; and

WHEREAS, the current Medicaid waiver creates an entitlement for services that requires that the needs of all individuals in the waiver program be met; and

WHEREAS, little opportunity exists for adults who are on the waiting list for the waiver program to be accepted into the program because children automatically move into the adult system when they turn 18 years of age; and

WHEREAS, the existing Medicaid waiver for services to people with developmental disabilities comes up for reauthorization in 2013, providing the state with an opportunity to develop a new waiver program for children's services that may allow for more creativity in the services provided and may be flexible enough to meet varying needs of children and families.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to review the opportunities that exist for creating a Medicaid waiver specific to services for children with developmental disabilities.

BE IT FURTHER RESOLVED, that the study examine:

(1) the ways in which a Medicaid waiver for children with developmental disabilities may allow both the state and the providers of home and community-based services to provide services more efficiently;

(2) the ways in which administrative costs may be affected by offering services through a waiver specific to children;

(3) whether a waiver for children would give the state and the providers of home and community-based services more flexibility in the delivery of services and in controlling costs; and

(4) the steps that may need to be taken if the study finds that an application for a developmental disabilities waiver for children would benefit not only the state but also the children and families served by a waiver program.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Department of Public Health and Human Services, the Office of Public Instruction, providers of home and community-based services for children, family members of children with developmental disabilities, and other interested parties as determined by the committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF PERFORMANCE-BASED FUNDING FOR K-12 EDUCATION, THE DEVELOPMENT OF A PERFORMANCE-BASED FUNDING DESIGN, AND AN IMPLEMENTATION PLAN FOR CONSIDERATION BY THE 63RD LEGISLATURE.

WHEREAS, having shared policy goals and accountability measures for K-12 education requires working for greater efficiency with improved outcomes; and

WHEREAS, the shared policy goals agreement for K-12 education calls for lower dropout rates and increased graduation percentages, among other things; and

WHEREAS, the citizens of Montana expect schools to be funded adequately and students to be well educated; and

WHEREAS, Montana taxpayers deserve the best possible return on their investment in education; and

WHEREAS, states that use performance-based funding formulas have realized improvement in student achievement.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate the Education and Local Government Interim Committee to:

(1) examine performance-based funding formulas for K-12 education used in other states;

(2) avail itself of reports and other resources available through the National Conference of State Legislatures, the Council of State Governments, and other reliable sources of information and entities involved in performance-based funding for K-12 education;

(3) consider the following elements as primary components of a performance-based funding formula for K-12 education in Montana:

(a) a retention component that would initially set aside a percentage of available funds to be distributed to a district or school when the district or school attains well-defined performance thresholds;

(b) a bonus component that would identify a portion of available funds to be used to induce and reward a district or school to meet well-defined performance goals and objectives; and

(c) a reduction component that would effectively function as a funding penalty when a district or school fails to meet or falls below well-defined performance benchmarks;

(4) design a performance-based funding formula or structure for K-12 education for use in this state that recognizes and accommodates Montana's historical commitment to local control, highly qualified educators, high student achievement, and continual improvement in education outcomes; and

(5) develop for consideration by the 63rd Legislature a plan to implement the performance-based funding formula or structure for K-12 education.

BE IT FURTHER RESOLVED, that the committee report its findings, conclusions, and recommendations, including a performance-based funding design and implementation plan, to the Governor, the Superintendent of Public Instruction, and the 63rd Legislature.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded prior to September 15, 2012.

Adopted April 28, 2011

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON RESTORATIVE JUSTICE FOR OFFENDERS; AND

REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE.

WHEREAS, restorative justice is a criminal justice model that focuses on repairing the harm to all parties affected by a crime and holding offenders accountable, rather than on retribution against and punishment of the offender; and

WHEREAS, restorative justice views crime as wrongdoing against individuals and communities, rather than as a wrongdoing against the state; and

WHEREAS, restorative justice programs, such as victim-offender dialogue, mediation, and victim impact panels, encourage offender responsibility and reduced revictimization; and

WHEREAS, the state Department of Corrections has embraced restorative justice principles in programs and services for offenders and victims, including facilitated victim-offender dialogue, victim impact panels at department facilities, offender accountability letters, and centralized restitution collection; and

WHEREAS, other programs in other states and nations have shown lower recidivism rates and cost savings to state law enforcement; and

WHEREAS, the 2007 Montana Legislature passed House Bill No. 629, which enacted section 46-1-502, MCA, allowing courts to refer many types of criminal cases for mediation, potentially diverting cases from the Department of Corrections while allowing all parties to reach settlement agreements for victim restitution, community reparation, and offender treatment and programming.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) analyze restorative justice programs in Montana and determine which programs are most effective at rehabilitating offenders and identify any weaknesses or gaps in Montana's programs;

(2) investigate restorative justice options implemented in other states and nations and identify programs that emphasize restitution and the rehabilitation of nonviolent offenders as an alternative to incarceration;

(3) gather information from national experts and explore methods of measuring the effectiveness of restorative justice programs in terms of reducing recidivism and return rates of offenders, decreasing the potential for future victimization of Montana citizens, and reducing general fund expenditures related to incarceration;

(4) develop recommendations on which programs in Montana should be retained and how restorative justice programs in Montana may be improved.

BE IT FURTHER RESOLVED, that this interim study provide ample opportunity for stakeholders in the criminal justice system, including the state Department of Corrections, the Department of Justice, the Office of the Public Defender, crime victims, victim advocates, victim service providers, and citizens at large, to participate.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS TO REDUCE CHILDHOOD HEALTH TRAUMA AND ITS LONG-TERM EFFECT ON CHILDREN.

WHEREAS, Montana's future depends in large part on the health, growth, and achievement of the state's children; and

WHEREAS, many physical, mental, and educational disabilities are preventable through prenatal care, parent education, family support, and other efforts to prevent or mitigate childhood trauma; and

WHEREAS, the human brain grows to 85% of its adult size by the time a child is 3 years of age, and this growth is profoundly shaped by the child's experiences during those years, particularly by the safety, stability, and nurturing provided by the child's primary care givers; and

WHEREAS, repeated childhood trauma, including chronic neglect, may cause significant physical changes to the brains and nervous systems of children that profoundly affect both their physical health and mental health as adults; and

WHEREAS, childhood traumatic stress can be either acute stress, such as community violence, serious accidents, the loss or sudden death of family members and friends, removal from the home, and physical or sexual assault, or it can be chronic stress, such as neglect, physical and emotional abuse, and domestic violence; and

WHEREAS, children who receive safe, stable, nurturing care generally reach appropriate developmental milestones, form secure attachments and satisfying social relationships, and develop effective coping skills and the resiliency to recover from traumatic events; and

WHEREAS, acute or chronic childhood trauma may prevent or reduce resiliency; and

WHEREAS, unaddressed childhood trauma may affect a child's experiences later in life and may lead to problems such as poor physical health, addiction, and mental illness; and

WHEREAS, nurses visit high-risk pregnant women in their homes as part of the Montana Initiative for the Abatement of Mortality in Infants, a program designed to provide the women with information they can use to improve their own health and thus the health outcomes of their newborns; and

WHEREAS, the national Nurse-Family Partnership program for low-income, first-time parents and their children has been shown to reduce traumatic events, reduce child abuse and neglect, and reduce adolescent arrests by 60% and adjudications by 90% later in the child's life; and

WHEREAS, programs that teach biological and foster parents skills for responding to traumatized children have been shown to reverse some of the symptoms of trauma in young children and to improve resiliency; and

WHEREAS, the National Native Children's Trauma Center has been working with the Institute for Educational Research to create trauma mitigation demonstration projects in schools serving the Blackfeet, Rocky Boy's, Fort Peck, Crow, Northern Cheyenne, and Flathead Reservations and Missoula county public schools in low-income neighborhoods; and

WHEREAS, the projects have trained more than 1,000 Montana clinicians and educators to recognize and respond to symptoms of trauma and have helped schools develop short-term cognitive behavioral intervention programs that help to build long-term family and peer support for children, in an effort to increase resiliency and reduce the effects of trauma.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study promising and evidence-based practices for the prevention of childhood trauma and for mitigating its effects on children.

BE IT FURTHER RESOLVED, that the study efforts include:

(1) compiling data on the prevalence of acute and chronic childhood traumatic stress;

(2) evaluating the extent and impact of current efforts in Montana to prevent childhood trauma and to mitigate its effects after it occurs;

(3) identifying promising and evidence-based practices that are most appropriate for Montana communities, particularly rural communities;

(4) identifying the communities most in need of prevention and mitigation efforts related to childhood trauma as a way to prevent physical and mental health problems, substance abuse and addiction, school failure, and involvement in the criminal justice system; and

(5) identifying any appropriate steps Montana policymakers may take to reduce childhood trauma in order to improve the mental health of Montanans.

BE IT FURTHER RESOLVED, that the study include representatives of the Department of Public Health and Human Services, the Office of Public Instruction, the mental health service area authorities and local advisory councils, groups involved in efforts to prevent childhood trauma, the Indian Health Service, Montana Indian tribes, and other interested parties as identified by the committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following Senate Rules be adopted:

RULES OF THE MONTANA SENATE CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

S10-30. President, President pro tempore, and other officers. (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator as President and a Senator as President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the President when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(6) The President shall approve the calendar for each legislative day.

(7) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(8) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(9) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the Senate have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature and wants to appoint an acting President during the President's absence, the President may do so, or the members of the Senate have the right to immediately nominate and elect an acting President of the President's caucus.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Majority Leader. The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

- (1) being the lead speaker for the majority party during floor debates;
- (2) helping the President develop the calendar;
- (3) assisting the President with program development, policy formation, and policy decisions;
- (4) presiding over the majority caucus meetings; and
- (5) other duties as assigned by the caucus.

S10-100. Majority Whip. The duties of the majority whip may include but are not limited to:

- (1) assisting the majority leader;
- (2) ensuring member attendance;
- (3) counting votes;
- (4) generally communicating the majority position; and
- (5) other duties as assigned by the caucus.

S10-110. Minority Leader. The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

- (1) developing the minority position;
- (2) negotiating with the majority party;
- (3) directing minority caucus activities on the chamber floor;
- (4) leading debate for the minority; and
- (5) other duties as assigned by the caucus.

S10-120. Minority Whip. The major responsibilities for the minority whip may include but are not limited to:

- (1) assisting the minority leader on the floor;
- (2) counting votes;
- (3) ensuring attendance of minority party members; and
- (4) other duties as assigned by the caucus.

S10-130. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) The Secretary of the Senate shall designate a secretary to take and prepare written minutes of committee meetings for each standing committee. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) The President, majority leader, and minority leader may each appoint a private secretary.

S10-140. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

- (1) performing the duties prescribed by law or other provisions of these rules;
- (2) serving as parliamentary advisor to the Senate;
- (3) compiling and maintaining the calendar for approval by the President;
- (4) keeping the leadership informed on the progress and workload of the Senate;
- (5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;
- (6) keeping and maintaining records of the Senate; and
- (7) supervision of the Senate employees, except as otherwise provided.

S10-150. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

- (1) maintain order as directed by the President or chair of the Committee of the Whole;
- (2) enforce the lobbying rules of the Senate;
- (3) supervise the employees assigned to the Sergeant's office;
- (4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;
- (5) perform duties as required by other rules and the Senate.

S10-160. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-170. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal by the journal clerks trained by the Legislative Services Division under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

- (a) committee reports;
- (b) every motion, the name of the Senator presenting it, and its disposition;
- (c) the introduction of legislation in the Senate;
- (d) consideration of legislation subsequent to introduction;
- (e) roll call votes;
- (f) messages from the Governor and the House of Representatives;
- (g) every amendment, the name of the Senator presenting it, and its disposition;
- (h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and
- (i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and made available.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2 Decorum

S20-10. Questions of order — appeal. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Violation of rules — call to order — appeal. (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority leader or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. Censure consists of an official public reprimand of a Senator for inappropriate behavior. The Senate shall act upon the recommendation of the Committee.

S20-30. Questions of privilege — restrictions. (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

S20-40. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-50. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) registered representatives of the media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1) or (2).

S20-60. Communications to Senate. A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-70. Distribution of materials on floor — exception. (1) Subject to subsection (2), material may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

(2) Subsection (1) does not apply to material written by staff at the request of a Senator and placed on the Senator's desk.

CHAPTER 3
Committees

S30-10. Committee appointments. (1) There is a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from the majority party and three from the minority party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees. Prior to making committee assignments, the Committee on Committees shall take into consideration the recommendations of the minority leader for minority committee assignments.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the majority leader and minority leader.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees — classification. (1) The standing committees of the Senate are as follows:

- (a) class one committees:
 - (i) Business, Labor, and Economic Affairs;
 - (ii) Finance and Claims;
 - (iii) Judiciary; and
 - (iv) Taxation;
- (b) class two committees:
 - (i) Education and Cultural Resources;
 - (ii) Local Government;
 - (iii) Natural Resources;
 - (iv) Public Health, Welfare, and Safety; and
 - (v) State Administration;
- (c) class three committees:
 - (i) Agriculture, Livestock, and Irrigation;
 - (ii) Energy;
 - (iii) Fish and Game; and
 - (iv) Highways and Transportation; and
- (d) on call committees:
 - (i) Ethics;
 - (ii) Legislative Administration; and
 - (iii) Rules.

(2) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(3) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the pre-session caucus provided for in 5-2-201.

S30-40. Ex officio members — quorum. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The majority leader and the minority leader are ex officio nonvoting members of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for:

(a) maintaining order within the committee room and its environs;

(b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports by signing them and submitting them promptly to the Secretary of the Senate. The chair shall sign business reports reflecting action taken in each committee meeting that enable the preparation of committee minutes. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

S30-60. Meetings — notice — purpose — minutes. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the third legislative day;

(b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing;

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session; or

(d) due to appropriate circumstances.

(3) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(4) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

(5) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(6) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(7) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(8) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(9) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but shall take executive action and may report the bill to the Committee of the Whole.

(10) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(11) A bill may be rereferred at any time before its passage.

S30-70. Procedures — member privileges. (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor, a committee may finally dispose of a bill without a hearing. Except as provided in S30-60(7), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all proposed changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation,

the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the Senate that are formally adopted when the committee report is accepted by the Senate.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the Committee of the Whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

S30-80. Public testimony — decorum — time restrictions. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

S30-100. Pairs prohibited — absentee or proxy voting. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for absentee or proxy voting must be reflected in the committee minutes.

S30-140. Reconsideration in committee. A committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-150. Committee requested legislation. (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the drafting and introduction of legislation.

(b) The Finance and Claims Committee may request the drafting and introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

S30-160. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) As provided in 2-2-112, a Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the

Legislative Services Division and signed by a Senator as chief sponsor. The types of legislation allowed include:

- (1) bills of any subject, except appropriations;
- (2) joint resolutions, which may be used for any purpose specified in Joint Rule 40-60; and
- (3) simple resolutions, which may:
 - (a) adopt or amend Senate rules;
 - (b) provide for the internal affairs of the Senate;
 - (c) express confirmation of the Governor's appointments; or
 - (d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction — first reading. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation. Legislation properly introduced or received in the Senate must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a Senator may question adherence to rules. Acknowledgment by the Secretary of the Senate of receipt of legislation transmitted from the House commences the time limit for consideration of the legislation. All legislation received by the Senate may be referred to a committee prior to being read across the rostrum.

(2) Bills and resolutions preintroduced as provided in Joint Rule 40-40 may be assigned to committee and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

(4) The sponsor may ask the Legislative Services Division to change or correct a short title used on the bill status system.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee or withdrawn from a committee by motion, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole unless a printed version of an unamended bill is available.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

CHAPTER 5

Floor Action

S50-10. Attendance — mandatory voting — quorum. (1) Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

(2) A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, sec. 10(2)).

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Governor;
- (5) messages from the House of Representatives;
- (6) motions;
- (7) first reading and commitment of bills;
- (8) second reading of bills (Committee of the Whole);
- (9) third reading of bills;
- (10) unfinished business;
- (11) special orders of the day; and
- (12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions may be made:

- (a) to adjourn (nondebatable S50-60);

- (b) for a call of the Senate (nondebatable S50-60);
- (c) to recess (nondebatable S50-60);
- (d) question of privilege;
- (e) to lay on the table (nondebatable S50-60);
- (f) for the previous question (nondebatable S50-60);
- (g) to postpone to a certain day;
- (h) to refer or commit;
- (i) to amend; and
- (j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration as provided in S50-90.

(4) A motion or proposition on a subject different from that under consideration may not be accepted unless a substitute motion is in order.

S50-60. Nondebatable motions. The following motions are not debatable:

- (1) to adjourn;
- (2) for a call of the Senate;
- (3) to recess or rise;
- (4) for parliamentary inquiry;
- (5) for suspension of the rules;
- (6) to lay on the table;
- (7) for the previous question;
- (8) to limit, extend the limits of, or to close debate;
- (9) to amend an undebatable motion;
- (10) to change a vote (S50-200);
- (11) to pass business in Committee of the Whole;
- (12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions — restrictions. (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise. The motion for the previous question is nondebatable as provided in S50-60(7).

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour,

one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion regardless of whether debate on the main motion has occurred.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration — time restrictions. (1) Subject to subsection (6), any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought. However, an inquiry may be made concerning the purpose of the motion to reconsider.

(2) A motion to reconsider must be disposed of when made unless a proper substitute motion is made and adopted.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

(6) If the Senate has adjourned for more than 2 days, then a motion to reconsider action taken on the last day the Senate was in session is in order on the day the Senate reconvenes or on the following legislative day.

S50-100. Dividing a question — segregation excluded. A Senator may request to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain. A vote is not required on a request to divide a question, but the chair may rule that a question is not divisible. The ruling of the chair may be appealed as provided in S20-10 and S20-20. For an appeal of a ruling of the presiding officer, the question for the Senate must be stated as, "Shall the ruling of the chair be upheld?". A motion to segregate pursuant to S50-140(4) is not a request to divide a question.

S50-110. Rules for questions or bills requiring other than a majority vote. (1) Except as provided in subsection (2), a question or bill requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question or bill prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S50-120. Committee reports to Senate — reconsideration. (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report.

(2) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider as provided in S50-90. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. Subject to S50-90(6), the reconsideration motion must be made within 1 legislative day of the adoption of the committee report and is not in order if the bill has been considered in Committee of the Whole.

(4) (a) Subject to subsection (4)(b), the Rules Committee and conference committees may report at any time, except during a call of the Senate, when a vote is being taken, or during Committee of the Whole.

(b) The Rules Committee may report during Committee of the Whole on matters referred to the Committee by the Committee of the Whole.

S50-130. Conference committee — reports. (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

S50-140. Second reading — Committee of the Whole report — segregation — rejection. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. The sponsor shall make an opening statement, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

S50-150. Committee of the Whole amendments. (1) All Committee of the Whole amendments must be prepared by the staff of the Legislative Services Division, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

S50-160. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable unless specified in S50-60.

(2) The only motions in order during Committee of the Whole are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (House amendments to Senate legislation);

(c) amend;

(d) indefinitely postpone;

(e) pass consideration;

(f) change the order in which legislation is placed on the agenda (nondebatable S50-60(14));

(g) rise (nondebatable S50-60(3));

(h) rise and report progress and ask leave to sit again (nondebatable S50-60(3)); or

(i) rise and report (nondebatable S50-60(3)).

(3) The motions listed in subsection (2) may be made in descending order as listed.

S50-170. Committee of the Whole — generally. (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

S50-180. Voting on second reading — positive disposition of motions. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-190. Third reading procedure. (1) Unless rereferred to a committee by a majority vote after the adoption of the Committee of the Whole report but before moving to another order of business, all legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state “Those in favor vote yes and those opposed vote no” and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks “Has every member voted?” (reasonable pause), “Does any member wish to change his or her vote?” (reasonable pause), “The Secretary will record the vote.”

S50-200. Senate voting — changing a vote — objection. (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator’s vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator’s vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

S50-210. Pairs — Committee of the Whole restriction. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-220. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator’s absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator’s attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote of the members present.

S50-230. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate

legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

S50-240. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

S50-250. Governor's veto. (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

CHAPTER 6

Rules

S60-10. Senate rules — amendment — adoption — suspension. (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor must be:

- (a) received by the President;
- (b) delivered to the Secretary of the Senate;
- (c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee. The President of the Senate may refer any individual nomination contained in a list received from the Governor to any standing committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process — preliminary reports — separate consideration. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include the nominee submitted to the committee or a group of nominees, the group of nominees being specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been given.

(2) Following the hearings for a group of nominees, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees. A preliminary standing committee report is not required for a resolution for a single nominee pursuant to subsection (5).

(3) (a) If a Senator wishes to have an individual nominee or group of nominees considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator or when a single nomination has been submitted to a committee, the committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include only the single or separated nominee. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

- (1) a call of the Senate with a quorum pursuant to S50-220(2) (five Senators);
- (2) a motion to lift a call of the Senate pursuant to S50-220(4) (two-thirds of the members present);
- (3) a motion to amend or suspend rules pursuant to S60-10 (two-thirds);
- (4) a motion to override the Governor's veto pursuant to S50-250 and Article VI, section 10(3), of the Montana Constitution (two-thirds);
- (5) a motion to approve a bill to appropriate the principal of the coal trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths of each house);
- (6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than those described in that section (three-fifths of each house);
- (7) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature);
- (8) an appeal of the ruling of the presiding officer pursuant to S20-10 (one Senator, seconded by two other Senators);
- (9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);
- (10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds); and
- (11) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths).

Adopted January 10, 2011

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE OF THE STATE OF MONTANA.

WHEREAS, Chief Justice Mike McGrath of the Montana Supreme Court made the appointment, below designated, pursuant to an Order of the Court, dated June 24, 2009; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

C. Bruce Loble as Chief Water Judge of the State of Montana, to serve a 4-year term commencing July 1, 2009, and ending June 30, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted February 2, 2011

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Ms. Samantha Sanchez, Helena, Montana, appointed to serve a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 1, 2011

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, AND FEBRUARY 16, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Jim Schillinger, Baker, Montana, for a term ending April 18, 2013.

(2) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Linda Nielsen, Nashua, Montana, for a term ending March 1, 2017.

Ed Waldner, Chester, Montana, for a term ending March 1, 2017.

Jeffrey S. Lewis, Corvallis, Montana, for a term ending March 1, 2017.

(3) As members of the Livestock Loss Reduction and Mitigation Board, in accordance with section 2-15-3110, MCA:

Elaine Allestad, Big Timber, Montana, for a term ending January 1, 2015.

Larry Trexler, Hamilton, Montana, for a term ending January 1, 2015.

John Herman, Hot Springs, Montana, for a term ending January 1, 2015.

(4) As members of the Milk Control Board, in accordance with section 2-15-3105, MCA:

Jerrold A. Weissman, Great Falls, Montana, for a term ending January 1, 2015.

W. Scott Mitchell, Billings, Montana, for a term ending January 1, 2015.

(5) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Bruce Sorensen, Belgrade, Montana, for a term ending July 31, 2014.

Joan Marshall, Ekalaka, Montana, for a term ending July 31, 2015.

Kim K. Baker, Hot Springs, Montana, for a term ending July 31, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2011

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Ralph Lenhart, Glendive, Montana, appointed to serve a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2011

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Carl Thuesen, Billings, Montana, for a term ending March 27, 2013;
Shelly Engler, Bozeman, Montana, for a term ending March 27, 2013;
Maire O'Neill, Bozeman, Montana, for a term ending March 27, 2013;
Janet A. Cornish, Butte, Montana, for a term ending March 27, 2013.

(2) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Alexander C. Edwards, Billings, Montana, for a term ending January 1, 2015;

Fred Lark, Lewistown, Montana, for a term ending January 1, 2015;
Robert Buckles, Bozeman, Montana, for a term ending January 1, 2015;
Charles Manning, Lakeside, Montana, for a term ending January 1, 2015.

(3) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Mark Kuipers, Missoula, Montana, for a term ending February 1, 2015;
Rob Quist, Kalispell, Montana, for a term ending February 1, 2015;
Youpa Stein, Arlee, Montana, for a term ending February 1, 2015;
Wilbur Wood, Roundup, Montana, for a term ending February 1, 2015;
Jean Steele, Hamilton, Montana, for a term ending February 1, 2015.

(4) As members of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Sherry Dembowski-Wieckowski, Thompson Falls, Montana, for a term ending October 1, 2013;

Corie Mora, Great Falls, Montana, for a term ending October 1, 2015;
Sara Dobbins, Helena, Montana, for a term ending October 1, 2015.

(5) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Randi Hood, Butte, Montana, for a term ending January 1, 2015;
Laura Obert, Townsend, Montana, for a term ending January 1, 2013;
Brenda Desmond, Missoula, Montana, for a term ending January 1, 2015;
Angela Russell, Lodge Grass, Montana, for a term ending January 1, 2015;
Lois Menzies, Helena, Montana, for a term ending January 1, 2015;
Godfrey Saunders, Bozeman, Montana, for a term ending January 1, 2015;
Richard Kirn, Poplar, Montana, for a term ending January 1, 2015;
Mike Ferriter, Helena, Montana, for a term ending January 1, 2015;
Sherry Matteucci, Billings, Montana, for a term ending January 1, 2015.

(6) As a member of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Thomas Meeks, Great Falls, Montana, for a term ending July 1, 2015.

(7) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Thomas Nygard, Bozeman, Montana, for a term ending July 1, 2016;

Crystal Wong Shors, Helena, Montana, for a term ending July 1, 2016;

James W. Murry, Clancy, Montana, for a term ending July 1, 2015;

John G. Lepley, Fort Benton, Montana, for a term ending July 1, 2015;

Shirley Groff, Butte, Montana, for a term ending July 1, 2015;

Bob Brown, Whitefish, Montana, for a term ending July 1, 2016.

(8) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Susan Austin, Kalispell, Montana, for a term ending January 20, 2013;

Charles (Al) Carruthers, Butte, Montana, for a term ending January 20, 2013;

Shawn Real Bird, Hardin, Montana, for a term ending January 20, 2013;

Ray "Topper" Tracy, Stevensville, Montana, for a term ending January 20, 2013;

Susan Egbert, Helena, Montana, for a term ending January 20, 2014.

(9) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Darryl Dupuis, Polson, Montana, for a term ending January 1, 2014;

Margaret Hall-Bowman, Pablo, Montana, for a term ending January 1, 2014.

(10) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Steve Johnson, Missoula, Montana, for a term ending January 1, 2015;

Jerry Rukavina, Great Falls, Montana, for a term ending January 1, 2015;

David Gallik, Helena, Montana, for a term ending January 1, 2015;

Amy Verlanic, Anaconda, Montana, for a term ending January 1, 2015.

(11) As members of the Board of Private Security, in accordance with section 2-15-1781, MCA:

Daniel Taylor, Glasgow, Montana, for a term ending August 1, 2012;

Leo C. Dutton, Helena, Montana, for a term ending August 1, 2012;

Scott Swingley, Helena, Montana, for a term ending August 1, 2012;

Ronald Young, Joliet, Montana, for a term ending August 1, 2012;

Mark Chaput, Billings, Montana, for a term ending August 1, 2013.

(12) As members of the Board of Professional Engineers and Land Surveyors, in accordance with section 2-15-1763, MCA:

Ruhul Amin, Bozeman, Montana, for a term ending July 1, 2011;

David Elias, Anaconda, Montana, for a term ending July 1, 2014;

Hal Jacobson, Helena, Montana, for a term ending July 1, 2014;

Ronald Drake, Helena, Montana, for a term ending July 1, 2014;

Ingrid Clare Lovitt-Abramson, Missoula, Montana, for a term ending July 1, 2011.

(13) As members of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Scott Moore, Miles City, Montana, for a term ending April 1, 2015;

Timm Twardoski, Helena, Montana, for a term ending April 1, 2016.

(14) As members of the Public Safety Officer Standards and Training Council, in accordance with section 44-4-402, MCA:

Harold F. Hanser, Billings, Montana, for a term ending January 1, 2013;

John Schaffer, Great Falls, Montana, for a term ending January 1, 2015;

Lewis Matthews, Wolf Point, Montana, for a term ending January 1, 2015;

Georgette Hogan Boggio, Hardin, Montana, for a term ending January 1, 2015;

Winnie Ore, Helena, Montana, for a term ending January 1, 2015;

Mike Anderson, Helena, Montana, for a term ending January 1, 2015;

James Smith, Libby, Montana, for a term ending January 1, 2015.

(15) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Keith Heavyrunner, Browning, Montana, for a term ending August 1, 2013;

Harry LaFriniere, Florence, Montana, for a term ending August 1, 2014;

Mary Creech, Butte, Montana, for a term ending August 1, 2014;

Sylvia Beals, Forsyth, Montana, for a term ending August 1, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE HARD-ROCK MINING IMPACT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Ms. Marianne Roose, Eureka, Montana, appointed to a term ending January 1, 2015.

Ms. Donna von Nieda, Nye, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE AIR POLLUTION CONTROL ADVISORY COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the of the Air Pollution Control Advisory Council, in accordance with section 2-15-2106, MCA:

Mr. John Lei, Lame Deer, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Dyrck Van Hyning, Great Falls, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Edward Madler, Whitefish, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Larry Anderson, Great Falls, Montana, appointed to a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Joseph Russell, Kalispell, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Larry Mires, Glasgow, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Ms. Heidi Kaiser, Park City, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, AND FEBRUARY 16, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Erin Williams, Missoula, Montana, for a term ending February 1, 2017.

Doug Cordier, Columbia Falls, Montana, for a term ending February 1, 2013.

Lila Taylor, Busby, Montana, for a term ending February 1, 2018.

(2) As members of the Board of Regents, in accordance with section 2-15-1508, MCA:

Angela McLean, Anaconda, Montana, for a term ending February 1, 2017.

Teresa Borrenpohl, Bozeman, Montana, for a term ending June 30, 2011.

Major Robinson, Billings, Montana, for a term ending February 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2011

SENATE RESOLUTION NO. 14

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment to the Fish, Wildlife, and Parks Commission, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Dan Vermillion, Livingston, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 28, 2011

SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment to the Fish, Wildlife, and Parks Commission, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

A.T. "Rusty" Stafne, Wolf Point, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 26, 2011

SENATE RESOLUTION NO. 16

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA FACILITY FINANCE AUTHORITY, THE BOARD OF HOUSING, THE HUMAN RIGHTS COMMISSION, THE BOARD OF INVESTMENTS, THE BOARD OF LABOR APPEALS, THE RESEARCH AND COMMERCIALIZATION TECHNOLOGY BOARD, AND THE STATE COMPENSATION INSURANCE FUND BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Joe Quilici, Butte, Montana, for a term ending January 1, 2015.

Kimberly Rickard, Helena, Montana, for a term ending January 1, 2015.

Matthew B. Thiel, Missoula, Montana, for a term ending January 1, 2015.

(2) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Sheila Rice, Great Falls, Montana, for a term ending January 1, 2015.

Jeanette McKee, Hamilton, Montana, for a term ending January 1, 2015.

Bob Gauthier, Ronan, Montana, for a term ending January 1, 2015.

(3) As members of the Human Rights Commission, in accordance with section 2-15-1706, MCA:

Cynthia Wolken, Missoula, Montana, for a term ending January 1, 2015.

Lucy Simpson, Helena, Montana, for a term ending January 1, 2015.

(4) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Karl Englund, Missoula, Montana, for a term ending January 1, 2015.

Jon Satre, Helena, Montana, for a term ending January 1, 2015.

Gary Buchanan, Billings, Montana, for a term ending January 1, 2015.

Quinton Nyman, Helena, Montana, for a term ending January 1, 2015.

(5) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

JP Pomnichowski, Bozeman, Montana, for a term ending January 1, 2015.

Ed Logan, Billings, Montana, as the alternate member, for a term ending January 1, 2013.

(6) As a member of the Research and Commercialization Technology Board, in accordance with section 2-15-1819, MCA:

Jim Davison, Anaconda, Montana, for a term ending July 1, 2011.

(7) As members of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

Joe Brenneman, Kalispell, Montana, for a term ending April 28, 2015.

Wayne Dykstra, Billings, Montana, for a term ending April 28, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2011

SENATE RESOLUTION NO. 17

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE ELECTRICAL BOARD, THE BOARD OF PLUMBERS, THE BOARD OF PUBLIC ACCOUNTANTS, THE BOARD OF REAL ESTATE APPRAISERS, AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Mel Medhus III, Kalispell, Montana, for a term ending July 1, 2015.

Keith Simendinger, Helena, Montana, for a term ending July 1, 2012.

(2) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Olaf Stimac, Great Falls, Montana, for a term ending May 4, 2014.

Timothy E. Regan, Miles City, Montana, for a term ending May 4, 2014.

(3) As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Michael Johns, Deer Lodge, Montana, for a term ending July 1, 2014.

Tony Ennenga, Kalispell, Montana, for a term ending July 1, 2014.

Kathy VanDyke, Bozeman, Montana, for a term ending July 1, 2014.

(4) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Jeffrey Fleming, Huntley, Montana, for a term ending May 1, 2013.

Dennis Hoeger, Bozeman, Montana, for a term ending May 1, 2013.

Jennifer McGinnis, Polson, Montana, for a term ending May 1, 2013.

Todd Schmidt, Kalispell, Montana, for a term ending May 1, 2014.

Anzarina Moore, Great Falls, Montana, for a term ending May 1, 2014.

(5) As a member of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Stephen Hess, Butte, Montana, for a term ending May 9, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2011

SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE TO THE STATE COMPENSATION INSURANCE FUND BOARD BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As the chair of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

Elizabeth Best, Great Falls, Montana, for a term ending April 28, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 26, 2011

SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Commerce, in accordance with sections 2-15-111 and 2-15-1801, MCA:

Mr. Dore Schwinden, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2011

SENATE RESOLUTION NO. 20

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

S. Kevin Howlett, Arlee, Montana, for a term ending January 1, 2015.

Carol Lambert, Broadus, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2011

SENATE RESOLUTION NO. 21

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Ms. Marcia Brown, Butte, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 22

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Loren Acton, Bozeman, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 23

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Ronald S. Efta, Wibaux, Montana, appointed to a term ending January 1, 2015.

Mr. Bret Smelser, Sidney, Montana, appointed to a term ending January 1, 2015.

Mr. Jack King, Billings, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2011

SENATE RESOLUTION NO. 24

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF COUNTY PRINTING, THE BOARD OF HORSERACING, AND THE BOARD OF PARDONS AND PAROLE MADE BY THE GOVERNOR AND SUBMITTED IN WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of County Printing, in accordance with section 2-15-1026, MCA:

Dan Killoy, Miles City, Montana, for a term ending April 1, 2013.

Calvin J. Oraw, Sidney, Montana, for a term ending April 1, 2013.

Marianne Roose, Eureka, Montana, for a term ending April 1, 2013.

Milton Wester, Laurel, Montana, for a term ending April 1, 2013.

Laura Obert, Townsend, Montana, for a term ending April 1, 2013.

(2) As a member of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Cody Drew, Circle, Montana, for a term ending January 20, 2012.

(3) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Michael E. McKee, Hamilton, Montana, for a term ending January 1, 2015.

John Rex, Miles City, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2011

SENATE RESOLUTION NO. 25

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS MADE BY THE GOVERNOR AND SUBMITTED BY

WRITTEN COMMUNICATION DATED FEBRUARY 16, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Bayliss Ward, Bozeman, Montana, for a term ending March 27, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2011

SENATE RESOLUTION NO. 26

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE BANKING BOARD, THE BOARD OF PLUMBERS, AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, AND MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Maureen Fleming, Missoula, Montana, for a term ending July 1, 2011.

Jon Redlin, Lambert, Montana, for a term ending July 1, 2012.

Mark E. Noennig, Billings, Montana, for a term ending July 1, 2012.

Evelyn Casterline, Vida, Montana, for a term ending July 1, 2012.

Kenneth M. Walsh, Twin Bridges, Montana, for a term ending July 1, 2012.

(2) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Debi Friede, Havre, Montana, for a term ending May 4, 2015.

Denver Fraser, Clancy, Montana, for a term ending May 4, 2015.

Scott Lemert, Livingston, Montana, for a term ending May 4, 2015.

Steve Carey, Frenchtown, Montana, for a term ending May 4, 2015.

David Lindeen, Helena, Montana, for a term ending May 4, 2015.

(3) As members of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Larry Milless, Stevensville, Montana, for a term ending May 9, 2015.

Connie Wardell, Billings, Montana, for a term ending May 9, 2015.

Shirley McDermott, Laurel, Montana, for a term ending May 9, 2015.

C.E. "Abe" Abramson, Missoula, Montana, for a term ending May 9, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2011

SENATE RESOLUTION NO. 27

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF HAIL INSURANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Gary Gollehon, Brady, Montana, for a term ending April 18, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 28

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA.

WHEREAS, since the activation in 1947 of the Montana Air National Guard, Montanans have flown this nation's premier fighter aircraft from the P-51 to the F-86, F-89, F-102, F-106, F-16, and F-15; and

WHEREAS, in Fiscal Year 2010, the Montana Air National Guard had payroll of \$41,248,479, which supported 1,050 drill-status airmen and soldiers of which 340 members were full-time employees; and

WHEREAS, the Montana Air National Guard has received numerous national awards, including the Air Force Outstanding Unit Award eight times, the Spaatz Trophy, the Hughes Trophy, and the William Tell Award; and

WHEREAS, the Great Falls community is the only community in the nation to be awarded the Fisher Award from the Department of Defense recognizing humanitarian support of the U.S. military; and

WHEREAS, the Montana Air National Guard has honorably served this country with overseas missions four times in the past decade and is currently serving an ALERT mission in Hawaii; and

WHEREAS, the Montana Air National Guard's reenlistment rate is at 94% as compared with the national average of 86%; and

WHEREAS, Great Falls International Airport, which is home to the Montana Air National Guard, has completed environmental impact studies for aircraft noise mitigation and, using taxpayer money, is currently providing noise mitigation to surrounding homes that offsets noise levels of the F-15 and next-generation tactical fighter aircraft; and

WHEREAS, Great Falls International Airport lacks encroachment issues and in times of emergency could use the currently inactive Malmstrom Air Force Base runway for aircraft recovery by reactivating the runway using the Federal Aviation Administration Military Airplane Program funding, upon approval by the Air Force; and

WHEREAS, the Great Falls International Airport Authority currently leases space to the Montana Air National Guard at the airport for a fee of \$1.00 a year in exchange for the Montana Air National Guard providing all firefighting services to the airport, which includes making available more than \$3 million in firefighting equipment and \$2 million in firefighters' annual payroll; and

WHEREAS, 3 years ago the Montana Air National Guard was tasked with conversion from F-16 aircraft to F-15 aircraft and completed the total conversion at a cost to the taxpayers of nearly \$80 million, including construction of a new Corrosion Control Facility, a new Operations Facility, additional space for munitions storage, and engine shop expansion. Added to that was pilot training at a cost to the public of \$55 million and maintenance training at a cost of \$3 million. The total F-16 to F-15 conversion was accomplished with savings to the taxpayers of more than \$2 million, with operational status achieved 1 year ahead of schedule; and

WHEREAS, the 7,000 square miles provided by the Hays Military Operations Area in northcentral Montana offers a virtually unencumbered airspace unique in its capacity to provide full-spectrum joint, combined, and integrated combat arms military training free of encroachment, electronic warfare constraints, and other restrictions that are present at other areas in the continental United States. This "National Treasure" airspace is particularly well-suited for future Air Superiority Mission training, particularly for next-generation tactical fighter aircraft that require significant airspace for their "Supercruise" capability; and

WHEREAS, Montana in the past has lost military missions and assets with significant impacts to this state's finances and jobs, including the base closure at Glasgow, which resulted in the loss of 16,000 residents; and

WHEREAS, funding to maintain the F-15C/D mission in Great Falls is to end in Fiscal Year 2012, with notification already sent by the Secretary of the Air Force and the federal government that the F-15C/D mission is to be relocated from Great Falls, Montana, to Fresno, California; and

WHEREAS, the decision to relocate was based on an Air Force cost analysis that contains questionable information and analysis and should be reconsidered based on presentation of actual data and accurate analysis.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Montana Senate questions the assumptions made and the accuracy of the analysis used in making the decision to relocate the F-15C/D mission out of Great Falls to Fresno, California, and requests a reconsideration of the decision based on further analysis and documentation regarding what truly is in the best interest of Montana and federal taxpayers. The following should be included in the documentation:

- (1) alert status impacts using three aircraft rather than the five aircraft used in the previous business case analysis;
- (2) inclusion of the costs of pilot training for Fresno pilots converting to F-15 aircraft;
- (3) inclusion of the costs for backfilling alert missions during the conversion from F-16 to F-15 missions in Fresno;
- (4) exclusion of costs already incurred in Great Falls for MILCOM (military communications) improvements;
- (5) inclusion of the costs of an upcoming 18-month environmental impact study that must be conducted in the Fresno area because of a change in mission;
- (6) inclusion of the cost of noise mitigation efforts and activities that will need to be undertaken in Fresno related to F-15 noise issues, including the costs of buying and demolishing homes that already have undergone taxpayer-funded noise mitigation for past missions but that now stand in what are considered unacceptable noise contours for the F-15;
- (7) inclusion of the costs of replacing VORTAC and TACAN systems in Fresno; and
- (8) inclusion of the costs to fix clear-zone requirements for munitions in Fresno. The current munitions facilities have active commercial taxiways in the explosive potential areas, and resolving this issue may add considerable costs.

BE IT FURTHER RESOLVED, that the Montana Senate ask the President of the United States, the Secretary of Defense, and the Secretary of the Air Force to stay the decision to relocate the F-15C/D mission to Fresno while a federal investigation is underway regarding a limited number of pilots and commanders within the Fresno Air National Guard and completely reconsider the decision if convictions are obtained based on the investigation.

BE IT FURTHER RESOLVED, that the Montana Senate protests the projected loss of 200 jobs of drill-status members of the National Guard, which is a projected result of a conversion from the F-15 to a C-27J Spartan aircraft mission. The loss of jobs includes the loss of 75 to 100 full-time National Guard employees, which means a loss of \$9 million to the National Guard payroll a year, not including or considering the loss of spouse or other family member employment in Montana. The financial loss also has a ripple effect on lost revenues from medical payments and economic activities. Further, incorporation of the new C-27J mission is estimated at \$15 million, including a new corrosion control facility and a nose dock to be added to the large hangar building in Great Falls. In addition, pilot training costs of \$20 million and maintenance training costs of \$3 million will be charged to taxpayers. While the new rugged military airlift platform can be configured for troop, medevac, or cargo transport, the C-27J aircraft has no firefighting or fire suppression capability.

BE IT FURTHER RESOLVED, that the Montana Senate requests reconsideration of the decision made by the Secretary of the Air Force that

included expenditures of \$80 million to convert the Air National Guard in Great Falls to the F-15C/D mission but now transfers that mission to Fresno, California, with an additional expenditure of \$40 million projected in Montana to convert and modify these same new facilities for the C-27J mission and a projected need for much greater expenditures to convert and modify F-16 facilities and training for the F-15C/D mission in California. The Montana Senate further protests the loss of taxpayer dollars spent over the last 3 years on a fighter mission that is to be relocated, particularly during weak economic times, with reduced Department of Defense budgets.

BE IT FURTHER RESOLVED, that the Montana Senate considers the loss of jobs, loss of local and state revenues, plus the associated diminution of taxes related to loss of the F-15C/D mission, even with the addition of the C-27J mission, to be catastrophic to the economy in Cascade County and to all Montanans.

BE IT FURTHER RESOLVED, that the Montana Senate recognizes the rich and honorable tradition in Montana of piloting fighter aircraft in defense of our great nation and that Air Force modernization of the F-15C/D aircraft with Active Electronically Scanned Array radars and new efficient and more powerful engines is likely to allow the F-15C/D aircraft to operate safely and effectively through at least 2025, as determined by full-scale fatigue testing.

BE IT FURTHER RESOLVED, that the national treasure of the Hays Military Operations Area, which supports unencumbered aircraft use, is at risk of being lost if the F-15C/D mission is moved from the State of Montana.

BE IT FURTHER RESOLVED, that the Montana Senate considers Montana to be a growth area for Unmanned Aircraft System technology, flight, evaluation, and testing as well as an ideal training ground for unmanned aircraft systems and aircraft mitigation and defense training and that Montana's growing unmanned aircraft system industry, if used in conjunction with a retained F-15C/D mission and ground-based radar in Montana, could be key to addressing threats to the airspace and national safety of the United States posed by unmanned aircraft systems.

BE IT FURTHER RESOLVED, that the Montana Senate is concerned about possible reductions in firefighting services or equipment at the Great Falls International Airport provided by the Montana Air National Guard in exchange for a \$1.00 lease, a service that has been of great value to citizens that fly commercial aircraft into Montana.

BE IT FURTHER RESOLVED, that the Montana Senate considers issues of encroachment and munitions safety to be nonproblems in Montana but still unresolved in California.

BE IT FURTHER RESOLVED, that the Montana Senate protests the appearance of a penalty against the Montana Air National Guard and the State of Montana when a fighter mission is transferred out of Montana, after numerous awards, a transition from the F-16 to F-15 fighters under cost and ahead of schedule, intense community support, unmatched reenlistment success and employee retention, and great and effective leadership at the local and state levels, to Fresno where portions of the Air National Guard are under an investigative cloud for fiscal improprieties.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President of the United States Barack Obama, Secretary Robert Gates at the Department of Defense, Senate Majority Leader Harry Reid, Speaker of the House of Representatives John Boehner, Montana's Congressional Delegation, and the Governor, urging them to do all within their

authority to retain the F-15C/D mission at the Montana Air National Guard 120th Fighter Wing as a measure of fiscal responsibility and safety for the people of Montana and the United States today and into the future.

Adopted April 11, 2011

SENATE RESOLUTION NO. 29

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, MARCH 17, 2011, AND MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Molly Danison, Missoula, MT, for a term ending September 1, 2013;

Mary Anne Brown, Great Falls, MT, for a term ending September 1, 2014;

Thomas Mensing, Red Lodge, MT, for a term ending September 1, 2014.

(2) As members of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Cathleen Fellows, Billings, MT, for a term ending January 1, 2013;

Scott Hansing, Helena, MT, for a term ending January 1, 2014.

(3) As a member of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Alison Mizner, Kalispell, MT, for a term ending April 16, 2013.

(4) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

George Johnston, Dillon, MT, for a term ending March 29, 2015;

Terry Klise, Missoula, MT, for a term ending March 29, 2016;

Luella Vogel, Great Falls, MT, for a term ending March 29, 2016.

(5) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Gene W. Bukowski, Billings, MT, for a term ending July 1, 2013;

Rebecca Wisnoskie, Helena, MT, for a term ending July 1, 2012.

(6) As members of the Board of Massage Therapy, in accordance with section 2-15-1782, MCA:

Michael Eayrs, Kalispell, MT, for a term ending May 6, 2011;

Stacy J. Baird, East Helena, MT, for a term ending May 6, 2012;

Deborah Kimmet, Missoula, MT, for a term ending May 6, 2013;

Nick Soloway, Helena, MT, for a term ending May 6, 2013;

Grace D. Bowman, Billings, MT, for a term ending May 6, 2013.

(7) As members of the Board of Medical Examiners in accordance with section 2-15-1731, MCA:

Carole Erickson, Missoula, MT, for a term ending September 1, 2013;

Dwight Thompson, Harlowton, MT, for a term ending September 1, 2013;
Pat Bollinger, Helena, MT, for a term ending September 1, 2013;
Ryan Burke, Great Falls, MT, for a term ending September 1, 2013;
Kris Spanjian, Billings, MT, for a term ending September 1, 2013;
Eileen Sheehy, Billings, MT, for a term ending September 1, 2013;
Anna Earl, Chester, MT, for a term ending September 1, 2014;
Nathan Thomas, Missoula, MT, for a term ending September 1, 2014;
Bruce Hayward, McAllister, MT, for a term ending September 1, 2014.

(8) As members of the Board of Nursing in accordance with section 2-15-1734, MCA:

N. Gregory Kohn, Billings, MT, for a term ending July 1, 2014;
Barbara Lundemo, Sidney, MT, for a term ending July 1, 2013;
Lanette Perkins, Missoula, MT, for a term ending July 1, 2014;
Kathleen Sprattler, Billings, MT, for a term ending July 1, 2014;
Brenda Schye, Fort Peck, MT, for a term ending July 1, 2014.

(9) As members of the Board of Nursing Home Administrators in accordance with section 2-15-1735, MCA:

Kathryn Beaty, Hamilton, MT, for a term ending May 28, 2015;
Ken Chase, Billings, MT, for a term ending May 28, 2016.

(10) As members of the Board of Occupational Therapy Practice in accordance with section 2-15-1749, MCA:

Cindy Stergar, Butte, MT, for a term ending December 31, 2014;
Nate Naprstek, Bozeman, MT, for a term ending December 31, 2014.

(11) As members of the Board of Pharmacy in accordance with section 2-15-1733, MCA:

Rebecca Deschamps, Missoula, MT, for a term ending July 1, 2014;
Lee Ann Bradley, Missoula, MT, for a term ending July 1, 2015.

(12) As members of the Board of Physical Therapy Examiners in accordance with section 2-15-1748, MCA:

Christian Appel, Bozeman, MT, for a term ending July 1, 2012;
Robin Peterson Smith, Billings, MT, for a term ending July 1, 2013.

(13) As members of the Board of Psychologists in accordance with section 2-15-1741, MCA:

George Watson, Bozeman, MT, for a term ending September 1, 2014;
Stuart Hall, Missoula, MT, for a term ending September 1, 2014;
Bonnie Hyatt-Murphy, Livingston, MT, for a term ending September 1, 2015.

(14) As a member of the Board of Public Assistance in accordance with section 2-15-2203, MCA:

Helen Barta Schmitt, Sidney, MT, for a term ending January 1, 2015.

(15) As members of the Board of Radiologic Technologists in accordance with section 2-15-1738, MCA:

Sharlett Dale, Harlowton, MT, for a term ending July 1, 2012;
Mike Nielsen, Billings, MT, for a term ending July 1, 2013;
Jesse Cole, Butte, MT, for a term ending July 1, 2014;
Charles McCubbins, Shelby, MT, for a term ending July 1, 2014;

Anna L. Hazen, Fort Benton, MT, for a term ending July 1, 2014;

Sharon Dinstel, Colstrip, MT, for a term ending July 1, 2014.

(16) As members of the Board of Respiratory Care Practitioners in accordance with section 2-15-1750, MCA:

Thomas Fallang, Butte, MT, for a term ending January 1, 2015;

Rusty Davies, Billings, MT, for a term ending January 1, 2013.

(17) As members of the Board of Sanitarians in accordance with section 2-15-1751, MCA:

Susan K. Brueggeman, Polson, MT, for a term ending July 1, 2011;

James Zabrocki, Miles City, MT, for a term ending July 1, 2013.

(18) As members of the Board of Social Work Examiners and Professional Counselors in accordance with section 2-15-1744, MCA:

Peter Degel, Helena, MT, for a term ending January 1, 2015;

Rosemary Hertel, Deer Lodge, MT, for a term ending January 1, 2015;

Beverly McCurry, Columbus, MT, for a term ending January 1, 2015.

(19) As members of the Board of Speech-Language Pathologists and Audiologists in accordance with section 2-15-1739, MCA:

Cheri Fjare, Big Timber, MT, for a term ending December 31, 2013;

Alida Wright, Columbia Falls, MT, for a term ending December 31, 2013;

Beverly Stiller, Lame Deer, MT, for a term ending December 31, 2013.

(20) As members of the Board of Optometry in accordance with section 2-15-1736, MCA:

Douglas Kimball, Bozeman, MT, for a term ending April 3, 2015;

Peter Fontana, Great Falls, MT, for a term ending April 3, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2011

SENATE RESOLUTION NO. 30

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE HONORABLE DANIEL A. BOUCHER AS DISTRICT JUDGE OF THE TWELFTH JUDICIAL DISTRICT OF THE STATE OF MONTANA MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 3-1-1011, MCA:

As District Judge of the Twelfth Judicial District of the state of Montana, Daniel A. Boucher, Havre, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2011

SENATE RESOLUTION NO. 31

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE CODE OF THE WEST AS THE MODEL CODE OF CONDUCT IN THE STATE OF MONTANA.

WHEREAS, the men and women who came to Montana during the westward expansion of the United States, including cowboys, ranchers, pioneers, miners, and peace officers and their families, lived by an unwritten code of conduct; and

WHEREAS, this unwritten code of conduct was built upon the principles of honesty, loyalty, hard work, and courage; and

WHEREAS, those who lived by this unwritten code of conduct valued personal integrity, self-reliance, and accountability; and

WHEREAS, these early residents also recognized that cooperation and fair dealing were necessary to their survival and success; and

WHEREAS, this unwritten code of conduct became known as the Code of the West; and

WHEREAS, author James P. Owen distilled the Code of the West into 10 principles to live by; and

WHEREAS, Montanans can derive wisdom and guidance from the Code of the West, which remains relevant to present and future generations of Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the State of Montana adopts the Code of the West, as derived from the book *Cowboy Ethics: What Wall Street Can Learn from the Code of the West* by James P. Owen and summarized as follows, as the model code of conduct for the State of Montana:

- (1) Live each day with courage.
- (2) Take pride in your work.
- (3) Always finish what you start.
- (4) Do what has to be done.
- (5) Be tough, but fair.
- (6) When you make a promise, keep it.
- (7) Ride for the brand.
- (8) Talk less and say more.
- (9) Remember that some things aren't for sale.
- (10) Know where to draw the line.

Adopted April 13, 2011

2010 BALLOT ISSUES

**Approved by Voters in the
November 2010 General Election**

CONSTITUTIONAL INITIATIVE NO. 105

A CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE PETITION

There is no existing state or local tax on transactions that sell or transfer real property in Montana. CI-105 amends the Montana Constitution to prohibit state or local governments from imposing any new tax on transactions that sell or transfer real property, such as residential homes, apartments, condominiums, townhouses, farms, ranches, land, and commercial property, after January 1, 2010.

- FOR amending the Montana Constitution to prohibit state or local governments from imposing any new tax on transactions that sell or transfer real property.
- AGAINST amending the Montana Constitution to prohibit state or local governments from imposing any new tax on transactions that sell or transfer real property.

The complete text of CI-105 follows:

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

NEW SECTION. Section 1. Article VIII of The Constitution of the state of Montana is amended by adding a new section 17 that reads:

Section 17. Prohibition on real property transfer taxes. The state or any local government unit may not impose any tax, including a sales tax, on the sale or transfer of real property.

NEW SECTION. Section 2. Retroactive Applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the sale or transfer of real property beginning after January 1, 2010.

NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Effective date. [This act] is effective upon approval by the electorate.

Constitutional Initiative No. 105 was approved by the following vote at the General Election held November 2, 2010:

For:	259,621
Against:	97,891

INITIATIVE NO. 161

A LAW PROPOSED BY INITIATIVE PETITION

I-161 revises the laws related to nonresident big game and deer hunting licenses. It abolishes outfitter-sponsored nonresident big game and deer combination licenses, replacing the 5,500 outfitter-sponsored big game licenses with 5,500 additional general nonresident big game licenses. It also increases the nonresident big game combination license fee from \$628 to \$897 and the nonresident deer combination license fee from \$328 to \$527. It provides for future adjustments of these fees for inflation. The initiative allocates a share of the proceeds from these nonresident hunting license fees to provide hunting access and preserve and restore habitat.

I-161 increases state revenues over the next four years by an estimated \$700,000 annually for hunting access and an estimated \$1.5 million annually for habitat preservation and restoration, assuming that all nonresident hunting licenses are sold. It also increases general nonresident hunting license revenues by inflation.

- FOR abolishing outfitter-sponsored hunting licenses, replacing outfitter-sponsored big game licenses with nonresident licenses, increasing nonresident license fees, and increasing funding for hunting access and habitat.
- AGAINST abolishing outfitter-sponsored hunting licenses, replacing outfitter-sponsored big game licenses with nonresident licenses, increasing nonresident license fees, and increasing funding for hunting access and habitat.

The complete text of I-161 follows:

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

Section 1. Section 87-1-242, MCA, is amended to read:

“87-1-242. Funding for wildlife habitat. (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature:

- (a) Class B-10, nonresident combination, \$77;
- (b) Nonresident antelope, \$20;
- (c) Nonresident moose, \$20;
- (d) Nonresident mountain goat, \$20;
- (e) Nonresident mountain sheep, \$20;
- (f) Class D-1, nonresident mountain lion, \$20;
- (g) Nonresident black bear, \$20;
- (h) Nonresident wild turkey, \$10;
- (i) Class AAA, combination sports, \$7;
- (j) Class B-11 nonresident deer combination, \$200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1), ~~except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under 87-1-268,~~ must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat.”

Section 2. Section 87-1-266, MCA, is amended to read:

“87-1-266. Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperater in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperater in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under ~~87-1-268~~ and 87-2-505.

(4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperater in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license, without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident. An employee rather than a family member may be designated to receive a license.

(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperater by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperater or spouse, or a niece or nephew.

(c) For purposes of this subsection (4), the term “employee” means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member pursuant to this subsection (4) does not affect the limits established in ~~87-1-268~~ and 87-2-505.

(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program.”

Section 3. Section 87-1-601, MCA, is amended to read:

“87-1-601. Use of fish and game money. (1) (a) Except as provided in [section 9] and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice’s court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or

money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 4. Section 87-2-202, MCA, is amended to read:

"87-2-202. (Temporary) Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, ~~except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268,~~ an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates April 24, 2010, pursuant to sec. 5, Ch. 237, L. 2007, unless contingency occurs. Bracketed language in subsection (1) concerning social security number, subsection (5), and bracketed language in subsection (6) terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

87-2-202. (Effective April 25, 2010, pursuant to Ch. 237, L. 2007, unless contingency occurs) Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to

receive a free wildlife conservation license pursuant to 87-2-803(12). It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, ~~except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268,~~ an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)”

Section 5. Section 87-2-505, MCA, is amended to read:

“87-2-505. Class B-10—nonresident big game combination license. (1)

(a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~\$628~~ **\$897** plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) ~~or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to~~

~~87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202.~~

~~(b) Not more than 11,500 unreserved 17,000 Class B-10 licenses may be sold in any 1 license year.~~

~~(c) Of the fee paid for the purchase of a Class B-10 nonresident big game combination license pursuant to subsection (1)(a), 25% must be deposited in the account established in [section 9].~~

~~(d) The cost of the Class B-10 nonresident big game combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U).~~

~~(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.”~~

Section 6. Section 87-2-510, MCA, is amended to read:

“87-2-510. Class B-11—nonresident deer combination license. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~\$328~~ \$527 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter or upon payment of the fee of \$328 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

~~(b) Of the fee paid for the purchase of a Class B-11 nonresident deer combination license pursuant to subsection (1)(a), 25% must be deposited in the account established in [section 9].~~

~~(c) The cost of the Class B-11 nonresident deer combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U).~~

~~(2) Not more than 2,300 4,600 unreserved Class B-11 licenses may be sold in any 1 license year.~~

~~(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.”~~

Section 7. Section 87-2-511, MCA, is amended to read:

“87-2-511. Sale and use of Class B-10, Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant’s hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

~~(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:~~

~~(a) accompany the applicant;~~

~~(b) provide guiding services for the species hunted by the applicant;~~

~~(c) direct the applicant’s hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;~~

~~(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and~~

~~(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.~~

~~(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.~~

~~(6)(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.~~

~~(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.~~

~~(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.~~

~~(9)(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.~~

~~(10)(6) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application."~~

Section 8. Section 87-2-512, MCA, is amended to read:

"87-2-512. Separation of Class B-7 license from Class B-10 license for deer management purposes — disposition of license revenue. (1) The commission may by rule separate the Class B-7 license from the Class B-10 license and sell the separated Class B-7 license, giving a preference to any Class B-10 license holder to purchase one of the separated Class B-7 licenses. In the case of separated Class B-7 licenses that are not purchased by Class B-10 license holders, the commission, for purposes of sound deer management:

(a) may authorize the sale of not more than 5,000 Class B-7 licenses that have been separated from the Class B-10 licenses, as limited by 87-2-504;

(b) may authorize all or a portion of the separated Class B-7 licenses to be sold as Class B-11 combination licenses;

(c) shall set the fees for the separated licenses as follows:

(i) the fee for a Class B-10 license without the deer tag may not be more than the fee set in 87-2-505 for licenses in the general category ~~and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268;~~ and

(ii) the fee for the separated Class B-11 licenses may not be more than the fees specified in 87-2-510 for licenses in the general and landowner-sponsored categories ~~and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268;~~

(d) may assign the separated Class B-7 or Class B-11 licenses for use in specific administrative regions, portions of administrative regions, hunting districts, or portions of hunting districts;

(e) may allocate a portion of the separated Class B-7 or Class B-11 licenses among the general and landowner-sponsored categories established in 87-2-510 and 87-2-511 but not count those licenses as part of the statutory quotas, with the Class B-7 licenses then subject to the requirements and procedures of 87-2-511;

~~(f) may allocate a portion of the separated Class B-7 or Class B-11 licenses to the outfitter-sponsored category subject to the requirements and procedures of 87-2-511, except that licenses in the outfitter-sponsored category may not comprise more than one-third of the licenses issued pursuant to this section and the number issued, when added to the number of Class B-11 licenses issued under 87-1-268, may not exceed 2,300 in any license year; and~~

~~(g)~~(f) may condition the separated Class B-7 and Class B-11 licenses as appropriate and necessary to manage the harvest of deer, including restricting the use of a license to either mule deer or whitetail deer.

(2) The revenue from any Class B-11 licenses that have been separated from Class B-10 licenses must be deposited in the state special revenue account to the credit of the department and not allocated pursuant to other statutory requirements generally applicable to Class B-11 licenses. The revenue from Class B-10 licenses sold without a deer tag must be allocated in the same manner as revenue from Class B-10 licenses sold with a deer tag.”

NEW SECTION. Section 9. Hunting access account. (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account may be used only for the purpose of funding any hunting access program established by law or by the department through administrative rule.

(2) The following funds must be deposited in the account:

(a) 25% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505(1)(c) and 25% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510(1)(b);

(b) 25% of the fee for hunting licenses issued to nonresident children of a resident pursuant to 87-2-514; and

(c) the hunting access enhancement fees assessed pursuant to 87-2-202(3)(c) and (3)(d).

(3) Any interest or income earned on the account must be deposited in the account.

NEW SECTION. Section 10. Repealer. Section 87-1-268, MCA, is repealed.

NEW SECTION. Section 11. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 9].

NEW SECTION. Section 12. Effective date. [This act] is effective March 1, 2011.

Initiative No. 161 was approved by the following vote at the General Election held November 2, 2010:

For:	187,870
Against:	161,201

INITIATIVE NO. 164

A LAW PROPOSED BY INITIATIVE PETITION

Under Montana law, deferred deposit (payday) lenders may charge fees equaling one-fourth of the loan, which, as an annual interest rate could range from 300 percent to 650 percent. Title lenders may charge similar interest rates. I-164 reduces the interest, fees, and charges that payday lenders, title lenders, retail installment lenders, and consumer loan licensees may charge to an annual interest rate of 36 percent. It prohibits businesses from structuring other transactions to avoid the rate limit. It also revises statutes applicable to pawn brokers and junk dealers.

I-164 reduces the licenses and examination fee revenue paid to the State because certain lenders may not renew their licenses.

- FOR reducing the annual interest, fees, and charges payday, title, and retail installment lenders and consumer loan licensees may charge on loans to 36 percent.
- AGAINST reducing the annual interest, fees, and charges payday, title, and retail installment lenders and consumer loan licensees may charge on loans to 36 percent.

The complete text of I-164 follows:

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

NEW SECTION. Section 1. Findings. The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less.

Section 2. Section 31-1-112, MCA, is amended to read:

“31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance. (1) A regulated lender, except for a deferred deposit loan licensee, title loan licensee, or consumer loan licensee, is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits.”

Section 3. Section 31-1-203, MCA, is amended to read:

“31-1-203. Penalties. (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract. In addition to other penalties provided by law, a violation of subsection (3) and a contract made in violation of the finance charge limitations imposed by 31-1-241 is a violation of title 30, chapter 14, part 1.

(3) A person may not engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as

personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.”

Section 4. Section 31-1-241, MCA, is amended to read:

“31-1-241. Finance charge limitation. (1) ~~Notwithstanding the provisions of any other law, the~~ The finance charge included in a retail installment contract must be at a rate agreed upon by the retail seller and the buyer, ~~but the finance charge may not exceed 36% per annum.~~

(2) ~~Notwithstanding the provisions of any other law, the~~ The finance charge included in a retail charge account agreement must be at a rate agreed upon by the retail seller and the buyer, ~~but the finance charge may not exceed 36% per annum.~~

(3) The finance charge must be computed from month to month (which need not be a calendar month) or over another regular billing cycle period by using either:

(a) the average daily balance in the account in the billing cycle period; or

(b) the ending balance of the account as of the last day of the billing cycle period less the amount of total purchases charged to the account during that billing cycle.

(4) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the billing cycle prior to the effective date of the change.

(5) If the retail seller increases the finance charge on a retail charge account agreement, then the increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(6) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(7) If the finance charge determined pursuant to subsection (3) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for the period.”

Section 5. Section 31-1-401, MCA, is amended to read:

“31-1-401. Interest pawnbrokers may receive — civil enforcement — prohibited activities. (1) A person may not carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or the pawnbroker’s or junk dealer’s employees or agents may not charge a fee of more than 25% of the amount of the loan for a 30-day period. The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option.

(2) The taking, receiving, reserving, or charging of a fee greater than that allowed under subsection (1) is considered a forfeiture of a sum double the amount of the fee for storage or caring that was agreed to be paid.

(3) (a) When a rate or charge greater than that provided for in subsection (1) has been paid, the person by whom it has been paid may recover from the pawnbroker or junk dealer reasonable attorney fees and an amount double the amount of the fee paid.

(b) An action under this ~~section~~ subsection (3) must be brought within 2 years after the payment of the fee. Before a suit may be brought, the party bringing suit shall make written demand for return of the fee paid.

~~(4) Unless licensed as a consumer loan licensee, deferred deposit loan licensee, or title loan licensee, a pawnbroker or junk dealer may not:~~

~~(a) cash or advance money for a postdated or deferred presentment check in exchange for a fee or finance charge;~~

~~(b) use a check, authorization for electronic access, or other method of access to a deposit account, savings account, or other financial or asset account as a condition of or security for an extension of credit;~~

~~(c) receive the title to a motor vehicle for the purpose of a pawn transaction or in pledge for a loan; or~~

~~(d) engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.~~

~~(5) In addition to other penalties provided by law, a violation of subsection (4) is a violation of title 30, chapter 14, part 1."~~

Section 6. Section 31-1-722, MCA, is amended to read:

"31-1-722. Prohibited and permitted fees — attorney fees and costs.

(1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

~~(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan. making or carrying each deferred deposit loan authorized by this part that exceeds 36% per annum, exclusive of the insufficient funds fees authorized in subsections (3) and (4).~~

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is

rendered in any action on a deferred deposit loan entered into pursuant to this part.”

Section 7. Section 31-1-817, MCA, is amended to read:

“31-1-817. Interest rates — fees charged. (1) The maximum rate of interest ~~that a title lender may contract for and receive~~ for making and carrying any title loan authorized by this part may not exceed: 36% per annum exclusive of the recording costs and service charges provided for in subsections (2) and (3).

(a) ~~25% for each 30-day period for the portion of a loan that does not exceed \$2,000;~~

(b) ~~18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and~~

(c) ~~10% for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.~~

(2) Title lenders may charge their actual costs of recording liens on borrowers’ certificates of title.

(3) Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon the presentment of an insufficient funds check.”

Section 8. Section 32-5-301, MCA, is amended to read:

“32-5-301. Fees charged to consumers. (1) A licensee may contract for and receive; ~~interest on any loan of money, interest as provided under 31-1-112.~~ Such interest, including fees and charges incurred in the making of the loan but excluding the fees authorized in subsections (2) and (3), may not exceed 36% per annum.

(2) If provided for in the contract, an additional fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.

(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

(4) The licensee may include in the principal amount of any loan:

(a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;

(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;

(c) bona fide fees or charges related to real estate security paid to third parties;

(d) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(e) fees for preparation of a deed, settlement statement, or other documents;

(f) fees for notarizing deeds and other documents;

(g) appraisal fees;

(h) fees for credit reports; and

(i) fees paid to a trustee for release of a trust deed.

(5) (a) Other fees may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. If any amount in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.

(b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntary."

NEW SECTION. Section 9. Effective Date. [This act] applies to all transactions governed hereby entered into on or after January 1, 2011.

Initiative No. 164 was approved by the following vote at the General Election held November 2, 2010:

For: 253,475

Against: 99,749

TABLES

Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates by Chapter Number
Effective Dates by Date
Session Law to Code
2010 Ballot Issues to Code

CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

<u>Title-Chapter-Section</u>	<u>Action</u>	<u>Chapter</u>	<u>Bill Number</u>
1-1-203	amended	Ch. 238	SB 337
1-1-215	amended	Ch. 211	HB 288
1-1-230	enacted	Ch. 89	HB 255
1-1-525	amended	Ch. 165	HB 528
1-6-105	enacted	Ch. 238	SB 337
2-1-501	enacted	Ch. 402	SB 125
2-2-121	amended	Ch. 386	SB 338
2-2-136	amended	Ch. 386	SB 338
2-3-212	amended	Ch. 65	HB 120
2-3-301	amended	Ch. 41	SB 53
2-4-110	amended	Ch. 99	HB 70
2-4-302	amended	Ch. 41	SB 53
	amended	Ch. 53	HB 23
2-4-307	amended	Ch. 333	HB 543
2-6-110	amended	Ch. 206	HB 103
2-6-203	amended	Ch. 170	HB 66
2-6-208	formerly 2-15-1013	Ch. 170	HB 66
2-7-503	amended	Ch. 289	SB 420
2-7-506	amended	Ch. 146	HB 41
2-7-517	amended	Ch. 289	SB 420
2-9-211	amended	Ch. 350	SB 331
2-10-111	enacted	Ch. 286	SB 347
2-10-112	enacted	Ch. 286	SB 347
2-15-155	enacted	Ch. 236	SB 120
2-15-1009	amended	Ch. 99	HB 70
2-15-1013	amended and renumbered 2-6-208	Ch. 170	HB 66
2-15-1017	repealed	Ch. 148	HB 77
2-15-1019	amended	Ch. 63	HB 118
2-15-1028	amended	Ch. 344	SB 187
2-15-1525	enacted	Ch. 300	SB 195
2-15-1731	amended	Ch. 18	SB 27
2-15-1773	amended	Ch. 328	HB 458
2-15-2302	amended	Ch. 102	HB 141
2-15-3110	amended	Ch. 229	HB 469
	amended	Ch. 339	HB 622
2-15-3111	amended	Ch. 229	HB 469
2-15-3112	amended	Ch. 229	HB 469
2-15-3113	amended	Ch. 71	HB 287
	amended	Ch. 229	HB 469
2-15-3114	amended	Ch. 339	HB 622
2-16-117	amended	Ch. 295	SB 75
2-16-501	amended	Ch. 266	SB 357
2-17-808	amended	Ch. 50	SB 69
	amended	Ch. 279	SB 59
2-18-103	amended	Ch. 24	HB 97
2-18-501	amended	Ch. 251	HB 411
2-18-641	amended	Ch. 128	HB 212
2-18-702	amended	Ch. 128	HB 212
2-18-704	amended	Ch. 54	HB 53
3-1-102	amended	Ch. 38	SB 41
3-1-1001	amended	Ch. 335	HB 587
3-1-1010	amended	Ch. 335	HB 587

MONTANA SESSION LAWS 2011

1988

3-2-101	amended (not codified — referendum)	Ch. 203	SB 268
3-2-102	amended (not codified — referendum)	Ch. 203	SB 268
3-7-221	amended	Ch. 335	HB 587
3-7-222	amended	Ch. 335	HB 587
3-7-223	amended	Ch. 335	HB 587
3-7-224	amended	Ch. 335	HB 587
3-7-225	enacted	Ch. 335	HB 587
3-10-116	amended	Ch. 172	HB 480
3-10-301	amended	Ch. 284	SB 238
3-10-1004	amended	Ch. 284	SB 238
3-11-101	amended	Ch. 38	SB 41
3-11-103	amended	Ch. 284	SB 238
3-11-109	enacted	Ch. 38	SB 41
3-11-110	enacted	Ch. 38	SB 41
5-2-406	amended	Ch. 242	HB 91
5-4-104	enacted	Ch. 379	HB 641
5-5-202	amended	Ch. 92	SB 34
5-5-211	amended	Ch. 92	SB 34
5-5-215	amended	Ch. 126	HB 142
5-5-223	amended	Ch. 91	SB 32
5-5-226	amended	Ch. 91	SB 32
5-5-228	amended	Ch. 91	SB 32
5-11-210	amended	Ch. 126	HB 142
5-11-221	repealed	Ch. 19	SB 31
5-13-305	amended	Ch. 234	SB 52
7-1-2111	repealed	Ch. 128	HB 212
7-1-2112	repealed	Ch. 128	HB 212
7-1-4151	amended	Ch. 284	SB 238
7-2-103	amended	Ch. 347	SB 283
7-2-2201	amended	Ch. 347	SB 283
7-2-2202	amended	Ch. 347	SB 283
7-2-2213	amended	Ch. 128	HB 212
7-2-2218	amended	Ch. 128	HB 212
7-2-2222	amended	Ch. 128	HB 212
7-2-2225	amended	Ch. 128	HB 212
7-2-2411	amended	Ch. 347	SB 283
7-2-2412	amended	Ch. 347	SB 283
7-2-2801	enacted	Ch. 347	SB 283
7-2-2802	enacted	Ch. 347	SB 283
7-2-2803	enacted	Ch. 347	SB 283
7-2-2804	enacted	Ch. 347	SB 283
7-2-2805	enacted	Ch. 347	SB 283
7-2-2806	enacted	Ch. 347	SB 283
7-2-2807	enacted	Ch. 347	SB 283
7-2-2808	enacted	Ch. 347	SB 283
7-2-2809	enacted	Ch. 347	SB 283
7-2-4101	amended	Ch. 90	HB 426
	amended	Ch. 177	SB 91
7-2-4601	amended	Ch. 186	HB 575
7-2-4606	amended	Ch. 186	HB 575
7-2-4608	amended	Ch. 186	HB 575
7-2-4705	amended	Ch. 186	HB 575
7-2-4731	amended	Ch. 186	HB 575
7-2-4732	amended	Ch. 186	HB 575
7-2-4734	amended	Ch. 186	HB 575
7-2-4736	amended	Ch. 301	SB 234
7-2-4741	amended	Ch. 186	HB 575
7-3-1214	amended	Ch. 128	HB 212
7-3-1306	amended	Ch. 128	HB 212
7-3-1341	amended	Ch. 128	HB 212
7-3-4302	amended	Ch. 214	HB 380
7-3-4324	amended	Ch. 19	SB 31
7-4-2106	amended	Ch. 266	SB 357

CODE SECTIONS AFFECTED

7-4-2405	amended	Ch. 128	HB 212
7-4-2601	amended	Ch. 128	HB 212
7-4-2602	amended	Ch. 128	HB 212
7-4-2631	amended	Ch. 215	HB 529
	amended	Ch. 347	SB 283
7-4-2632	amended	Ch. 347	SB 283
7-4-2636	amended	Ch. 45	SB 95
	amended	Ch. 135	HB 338
7-4-2637	amended	Ch. 135	HB 338
	amended	Ch. 347	SB 283
7-4-2703	amended	Ch. 128	HB 212
7-4-2705	amended	Ch. 128	HB 212
7-4-2711	amended	Ch. 244	HB 166
7-4-3006	amended	Ch. 128	HB 212
7-5-131	amended	Ch. 161	HB 391
7-5-2316	enacted	Ch. 132	HB 319
7-5-4316	enacted	Ch. 132	HB 319
7-6-202	amended	Ch. 306	SB 376
7-6-621	amended	Ch. 255	HB 552
7-6-2102	amended	Ch. 128	HB 212
7-6-2401	amended	Ch. 128	HB 212
7-6-2413	amended	Ch. 128	HB 212
7-6-2541	amended	Ch. 19	SB 31
7-6-4036	amended	Ch. 152	HB 123
7-7-2212	amended	Ch. 253	HB 538
7-7-2238	amended	Ch. 253	HB 538
7-7-2251	amended	Ch. 253	HB 538
7-7-2252	amended	Ch. 253	HB 538
7-7-2254	amended	Ch. 253	HB 538
7-7-4211	amended	Ch. 253	HB 538
7-7-4236	amended	Ch. 253	HB 538
7-7-4251	amended	Ch. 253	HB 538
7-7-4252	amended	Ch. 253	HB 538
7-7-4254	amended	Ch. 253	HB 538
7-7-4433	amended	Ch. 253	HB 538
7-7-4434	amended	Ch. 253	HB 538
7-8-2304	amended	Ch. 108	HB 348
7-10-220	amended	Ch. 253	HB 538
7-10-221	amended	Ch. 253	HB 538
7-11-1027	amended	Ch. 265	SB 288
7-12-2103	amended	Ch. 293	SB 1
7-12-2105	amended	Ch. 293	SB 1
7-12-2151	amended	Ch. 293	SB 1
7-12-2172	amended	Ch. 253	HB 538
7-12-4104	amended	Ch. 293	SB 1
7-12-4106	amended	Ch. 293	SB 1
7-12-4161	amended	Ch. 293	SB 1
7-12-4162	amended	Ch. 293	SB 1
7-12-4204	amended	Ch. 253	HB 538
7-13-2221	amended	Ch. 13	HB 101
7-13-2225	amended	Ch. 214	HB 380
7-13-2262	amended	Ch. 214	HB 380
7-13-2263	enacted	Ch. 214	HB 380
7-13-2272	amended	Ch. 214	HB 380
7-13-2273	amended	Ch. 214	HB 380
7-13-2277	amended	Ch. 13	HB 101
7-13-2278	amended	Ch. 13	HB 101
7-13-2279	amended	Ch. 13	HB 101
7-13-2282	amended	Ch. 214	HB 380
7-13-2303	amended	Ch. 35	HB 263
7-13-4107	amended	Ch. 301	SB 234
7-13-4208	repealed	Ch. 55	HB 62
	repealed	Ch. 214	HB 380

MONTANA SESSION LAWS 2011

1990

7-13-4310	repealed	Ch. 214	HB 380
7-13-4312	amended	Ch. 214	HB 380
7-14-2142	enacted	Ch. 180	HB 187
7-14-2407	enacted	Ch. 180	HB 187
7-14-4652	amended	Ch. 253	HB 538
7-15-4210	amended	Ch. 375	HB 561
7-15-4211	amended	Ch. 376	HB 562
7-15-4214	amended	Ch. 374	HB 560
7-15-4215	amended	Ch. 374	HB 560
7-15-4221	amended	Ch. 376	HB 562
7-15-4237	amended	Ch. 374	HB 560
	amended	Ch. 376	HB 562
7-15-4282	amended	Ch. 376	HB 562
7-15-4507	amended	Ch. 253	HB 538
7-21-3211	amended	Ch. 128	HB 212
7-22-2103	amended	Ch. 244	HB 166
7-22-2109	amended	Ch. 244	HB 166
7-22-2116	amended	Ch. 244	HB 166
7-22-2120	amended	Ch. 244	HB 166
7-22-2121	amended	Ch. 244	HB 166
7-22-2123	amended	Ch. 320	HB 133
7-22-2124	amended	Ch. 320	HB 133
7-22-2126	amended	Ch. 244	HB 166
7-22-2141	amended	Ch. 244	HB 166
7-22-2142	amended	Ch. 128	HB 212
	amended	Ch. 244	HB 166
7-22-2148	amended	Ch. 320	HB 133
7-22-2153	amended	Ch. 244	HB 166
7-31-113	amended	Ch. 253	HB 538
7-32-101	amended	Ch. 128	HB 212
7-32-2102	amended	Ch. 128	HB 212
7-32-2111	amended	Ch. 128	HB 212
7-33-2109	amended	Ch. 255	HB 552
7-33-2110	amended	Ch. 64	HB 119
7-33-2116	enacted	Ch. 168	HB 508
7-33-2205	amended	Ch. 305	SB 340
7-33-2209	amended	Ch. 255	HB 552
7-33-2311	amended	Ch. 64	HB 119
7-33-2316	amended	Ch. 64	HB 119
7-33-2403	amended	Ch. 255	HB 552
7-33-4107	amended	Ch. 169	SB 222
7-33-4108	amended	Ch. 169	SB 222
7-33-4109	amended	Ch. 255	HB 552
7-33-4111	amended	Ch. 255	HB 552
7-34-102	amended	Ch. 255	HB 552
7-35-4102	amended	Ch. 198	SB 275
10-1-104	amended	Ch. 22	HB 39
10-1-1501	enacted	Ch. 354	SB 417
10-1-1502	enacted	Ch. 354	SB 417
10-1-1503	enacted	Ch. 354	SB 417
10-1-1504	enacted	Ch. 354	SB 417
10-1-1505	enacted	Ch. 354	SB 417
10-1-1506	enacted	Ch. 354	SB 417
10-1-1511	enacted	Ch. 354	SB 417
10-1-1512	enacted	Ch. 354	SB 417
10-1-1513	enacted	Ch. 354	SB 417
10-1-1514	enacted	Ch. 354	SB 417
10-1-1515	enacted	Ch. 354	SB 417
10-1-1516	enacted	Ch. 354	SB 417
10-1-1517	enacted	Ch. 354	SB 417
10-2-501	amended	Ch. 33	HB 156
10-3-101	amended	Ch. 228	HB 279
10-3-103	amended	Ch. 228	HB 279

CODE SECTIONS AFFECTED

10-3-105	amended	Ch. 228	HB 279
10-3-310	amended	Ch. 228	HB 279
10-3-311	amended	Ch. 228	HB 279
10-3-313	amended	Ch. 228	HB 279
10-3-314	amended	Ch. 228	HB 279
10-3-315	amended	Ch. 228	HB 279
10-3-801	amended	Ch. 62	HB 98
10-3-1203	amended	Ch. 153	HB 131
10-3-1216	amended	Ch. 153	HB 131
10-3-1307	amended	Ch. 209	HB 213
	amended	Ch. 247	HB 277
10-3-1308	amended	Ch. 19	SB 31
10-4-311	amended	Ch. 19	SB 31
10-4-313	amended	Ch. 2	HB 22
	amended	Ch. 19	SB 31
13-1-106	amended	Ch. 242	HB 91
13-1-108	amended	Ch. 242	HB 91
13-1-210	enacted	Ch. 182	HB 330
13-1-303	amended	Ch. 242	HB 91
13-1-304	amended	Ch. 242	HB 91
13-2-108	amended	Ch. 242	HB 91
13-2-110	amended	Ch. 182	HB 330
	amended	Ch. 242	HB 91
13-2-112	amended	Ch. 242	HB 91
13-2-115	amended	Ch. 242	HB 91
13-2-122	amended	Ch. 242	HB 91
13-2-123	repealed 1/1/2012	Ch. 242	HB 91
13-2-220	amended	Ch. 242	HB 91
13-2-222	amended	Ch. 242	HB 91
13-2-304	amended	Ch. 242	HB 91
13-2-511	amended	Ch. 242	HB 91
13-2-512	amended	Ch. 242	HB 91
13-3-105	amended	Ch. 242	HB 91
13-4-102	amended	Ch. 242	HB 91
13-4-207	amended	Ch. 242	HB 91
13-10-201	amended	Ch. 242	HB 91
	amended	Ch. 304	SB 311
13-10-203	amended	Ch. 242	HB 91
13-10-209	amended	Ch. 242	HB 91
13-10-211	amended	Ch. 242	HB 91
13-10-325	amended	Ch. 242	HB 91
13-10-404	amended	Ch. 242	HB 91
13-10-405	amended	Ch. 242	HB 91
13-12-202	amended	Ch. 242	HB 91
13-12-203	amended	Ch. 242	HB 91
13-12-207	amended	Ch. 242	HB 91
13-13-111	amended	Ch. 242	HB 91
13-13-112	amended	Ch. 242	HB 91
13-13-113	amended	Ch. 242	HB 91
13-13-114	amended	Ch. 242	HB 91
13-13-116	amended	Ch. 242	HB 91
13-13-118	amended	Ch. 242	HB 91
13-13-119	amended	Ch. 242	HB 91
13-13-201	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-13-204	amended	Ch. 101	HB 99
13-13-205	amended	Ch. 190	SB 55
13-13-211	amended	Ch. 242	HB 91
13-13-212	amended	Ch. 101	HB 99
	amended	Ch. 111	HB 484
	amended	Ch. 182	HB 330
	amended	Ch. 242	HB 91
13-13-213	amended	Ch. 101	HB 99

MONTANA SESSION LAWS 2011

1992

13-13-214	amended	Ch. 242	HB 91
13-13-222	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-13-225	amended	Ch. 242	HB 91
13-13-231	repealed 1/1/2012	Ch. 242	HB 91
13-13-241	amended (voided by sec. 2, Ch. 331)	Ch. 101	HB 99
	amended	Ch. 242	HB 91
	amended	Ch. 331	HB 530
13-13-245	enacted	Ch. 101	HB 99
13-13-301	amended	Ch. 242	HB 91
13-13-602	amended	Ch. 242	HB 91
13-14-115	amended	Ch. 242	HB 91
13-14-117	amended	Ch. 242	HB 91
13-14-118	amended	Ch. 242	HB 91
13-14-212	amended	Ch. 242	HB 91
13-15-101	amended	Ch. 242	HB 91
13-15-107	amended	Ch. 242	HB 91
13-15-108	amended	Ch. 242	HB 91
13-15-112	amended	Ch. 242	HB 91
13-15-201	amended	Ch. 101	HB 99
13-15-205	amended	Ch. 242	HB 91
13-15-206	amended	Ch. 242	HB 91
13-15-402	amended	Ch. 242	HB 91
13-15-404	amended	Ch. 242	HB 91
13-15-506	amended	Ch. 242	HB 91
13-16-201	amended	Ch. 242	HB 91
13-16-412	amended	Ch. 242	HB 91
13-16-419	amended	Ch. 242	HB 91
13-17-101	amended	Ch. 128	HB 212
13-17-203	amended	Ch. 242	HB 91
13-17-503	amended	Ch. 242	HB 91
13-19-102	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-106	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-205	amended	Ch. 101	HB 99
13-19-206	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-207	amended	Ch. 101	HB 99
13-19-301	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-303	amended	Ch. 101	HB 99
13-19-305	amended	Ch. 101	HB 99
13-19-306	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-307	amended	Ch. 242	HB 91
13-19-308	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-309	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-310	repealed 1/1/2012	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-311	repealed 1/1/2012	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-19-312	amended	Ch. 101	HB 99
13-19-313	amended	Ch. 101	HB 99
	amended	Ch. 242	HB 91
13-21-201	amended	Ch. 190	SB 55
13-21-210	amended	Ch. 111	HB 484
	amended	Ch. 182	HB 330
	amended	Ch. 190	SB 55
13-21-211	repealed 1/1/2012	Ch. 242	HB 91
13-25-101	amended	Ch. 242	HB 91

13-25-104	repealed	Ch. 192	SB 194
13-25-105	repealed	Ch. 192	SB 194
13-25-107	repealed	Ch. 192	SB 194
13-25-301	enacted	Ch. 192	SB 194
13-25-302	enacted	Ch. 192	SB 194
13-25-303	enacted	Ch. 192	SB 194
13-25-304	enacted	Ch. 192	SB 194
13-25-305	enacted	Ch. 192	SB 194
13-25-306	enacted	Ch. 192	SB 194
13-25-307	enacted	Ch. 192	SB 194
13-25-308	enacted	Ch. 192	SB 194
13-25-309	enacted	Ch. 192	SB 194
13-27-202	amended	Ch. 372	HB 310
13-27-204	amended	Ch. 372	HB 310
13-27-205	amended	Ch. 372	HB 310
13-27-206	amended	Ch. 372	HB 310
13-27-207	amended	Ch. 372	HB 310
13-27-312	amended	Ch. 372	HB 310
13-27-315	amended	Ch. 372	HB 310
13-27-501	amended	Ch. 372	HB 310
13-37-225	amended	Ch. 6	HB 89
13-37-226	amended	Ch. 6	HB 89
13-38-201	amended	Ch. 242	HB 91
	amended	Ch. 268	SB 374
15-1-103	amended	Ch. 206	HB 103
15-1-112	repealed	Ch. 116	SB 12
15-1-121	amended	Ch. 393	HB 495
	amended	Ch. 411	SB 372
15-1-122	amended	Ch. 339	HB 622
15-1-123	enacted and amended	Ch. 411	SB 372
15-1-205	amended	Ch. 379	HB 641
15-1-206	amended (voided by sec. 3, Ch. 353)	Ch. 353	SB 411
15-1-210	enacted	Ch. 276	SB 382
15-1-216	amended (voided by sec. 3, Ch. 353)	Ch. 353	SB 411
	amended	Ch. 381	SB 166
15-1-402	amended	Ch. 261	SB 219
15-1-409	amended	Ch. 261	SB 219
15-6-137	amended	Ch. 309	SB 172
15-6-138	amended	Ch. 411	SB 372
15-6-141	amended	Ch. 309	SB 172
	amended	Ch. 411	SB 372
15-6-156	amended	Ch. 309	SB 172
15-6-157	amended	Ch. 309	SB 172
15-6-193	amended	Ch. 3	HB 21
15-6-201	amended	Ch. 278	HB 618
15-6-203	amended	Ch. 107	HB 293
15-6-230	enacted	Ch. 288	SB 412
15-7-101	amended	Ch. 356	HB 132
15-7-102	amended	Ch. 356	HB 132
	amended	Ch. 399	SB 295
15-7-103	amended	Ch. 356	HB 132
15-7-139	amended	Ch. 356	HB 132
15-7-201	amended	Ch. 356	HB 132
15-7-307	amended	Ch. 399	SB 295
15-8-111	amended	Ch. 373	HB 460
	amended	Ch. 399	SB 295
15-8-601	amended	Ch. 399	SB 295
15-10-305	amended	Ch. 152	HB 123
15-10-420	amended	Ch. 347	SB 283
	amended	Ch. 393	HB 495
	amended	Ch. 411	SB 372
15-15-101	amended	Ch. 197	SB 248
15-23-101	amended	Ch. 411	SB 372

MONTANA SESSION LAWS 2011

1994

15-23-703	amended	Ch. 128	HB 212
	amended	Ch. 406	SB 266
15-23-715	amended	Ch. 406	SB 266
15-24-925	amended	Ch. 339	HB 622
15-24-3001	amended	Ch. 128	HB 212
15-24-3201	enacted	Ch. 405	SB 265
15-24-3202	enacted	Ch. 405	SB 265
15-24-3203	enacted	Ch. 405	SB 265
15-24-3204	enacted	Ch. 405	SB 265
15-24-3211	enacted	Ch. 405	SB 265
15-30-2326	amended	Ch. 140	HB 467
15-30-2339	amended	Ch. 19	SB 31
15-30-2368	amended	Ch. 227	HB 125
15-30-2504	amended	Ch. 269	SB 413
15-30-2512	amended	Ch. 269	SB 413
15-30-2522	amended	Ch. 340	SB 11
15-30-2604	amended	Ch. 269	SB 413
	amended	Ch. 381	SB 166
15-30-3302	amended	Ch. 269	SB 413
15-31-101	amended	Ch. 269	SB 413
15-31-111	amended	Ch. 269	SB 413
15-31-130	amended	Ch. 227	HB 125
15-31-135	amended	Ch. 140	HB 467
15-31-136	amended	Ch. 140	HB 467
15-31-141	amended	Ch. 269	SB 413
15-31-150	amended	Ch. 123	HB 80
15-31-502	amended	Ch. 269	SB 413
15-35-108	amended	Ch. 19	SB 31
	amended	Ch. 312	HB 604
15-36-304	amended	Ch. 19	SB 31
15-36-332	amended	Ch. 128	HB 212
	amended	Ch. 418	SB 329
15-39-110	amended	Ch. 128	HB 212
15-44-103	amended	Ch. 356	HB 132
15-65-121	amended	Ch. 319	HB 111
	amended	Ch. 358	HB 477
15-65-131	amended	Ch. 319	HB 111
15-66-102	amended	Ch. 19	SB 31
15-70-324	amended	Ch. 19	SB 31
16-1-106	amended	Ch. 77	SB 203
16-1-401	amended	Ch. 277	SB 389
16-1-404	amended	Ch. 277	SB 389
16-2-203	amended	Ch. 19	SB 31
	amended	Ch. 28	HB 17
16-2-211	enacted	Ch. 345	SB 215
16-3-214	amended	Ch. 277	SB 389
16-3-303	amended	Ch. 77	SB 203
16-3-316	enacted	Ch. 86	HB 63
16-4-207	amended	Ch. 86	HB 63
16-4-311	amended	Ch. 277	SB 389
16-4-312	amended	Ch. 81	SB 289
16-4-1001	enacted	Ch. 412	SB 29
16-4-1002	enacted	Ch. 412	SB 29
16-4-1003	enacted	Ch. 412	SB 29
16-4-1004	enacted	Ch. 412	SB 29
16-4-1005	enacted	Ch. 412	SB 29
16-4-1006	enacted	Ch. 412	SB 29
16-4-1007	enacted	Ch. 412	SB 29
16-4-1008	enacted	Ch. 412	SB 29
16-4-1009	enacted	Ch. 412	SB 29
16-11-119	amended (voided by sec. 8, Ch. 324)	Ch. 19	SB 31
	amended	Ch. 324	HB 296
17-1-106	amended	Ch. 70	HB 252

17-1-511	amended	Ch. 19	SB 31
17-2-304	amended	Ch. 386	SB 338
17-3-1003	amended	Ch. 371	HB 165
17-5-107	enacted	Ch. 253	HB 538
17-5-205	amended	Ch. 8	HB 38
17-5-703	amended	Ch. 389	HB 351
17-6-201	amended	Ch. 349	SB 326
17-6-203	amended	Ch. 99	HB 70
17-6-302	amended	Ch. 9	HB 44
17-6-308	amended	Ch. 349	SB 326
17-6-311	amended	Ch. 9	HB 44
17-6-312	amended	Ch. 9	HB 44
17-6-313	amended	Ch. 9	HB 44
17-7-102	amended	Ch. 394	HB 613
17-7-162	enacted	Ch. 394	HB 613
17-7-205	amended	Ch. 387	HB 5
17-7-502	amended	Ch. 57	HB 79
	amended	Ch. 58	HB 81
	amended	Ch. 61	HB 93
	amended	Ch. 147	HB 49
	amended	Ch. 339	HB 622
	amended (voided by sec. 14, Ch. 411)	Ch. 411	SB 372
17-8-303	amended	Ch. 82	SB 335
18-4-402	amended	Ch. 185	HB 491
18-7-302	amended	Ch. 148	HB 77
18-7-303	repealed	Ch. 148	HB 77
18-7-305	repealed	Ch. 148	HB 77
18-7-306	amended	Ch. 148	HB 77
18-11-121	enacted	Ch. 404	SB 229
19-2-303	amended	Ch. 99	HB 70
19-2-403	amended	Ch. 99	HB 70
19-2-408	amended	Ch. 64	HB 119
19-2-506	amended	Ch. 99	HB 70
19-2-603	amended	Ch. 99	HB 70
19-2-706	amended	Ch. 99	HB 70
19-2-715	amended	Ch. 99	HB 70
19-2-801	amended	Ch. 99	HB 70
19-2-802	amended	Ch. 99	HB 70
19-2-908	amended	Ch. 99	HB 70
19-3-108	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-315	amended	Ch. 369	HB 122
19-3-319	amended	Ch. 99	HB 70
19-3-401	amended	Ch. 99	HB 70
19-3-403	amended	Ch. 99	HB 70
19-3-412	amended	Ch. 99	HB 70
19-3-513	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-901	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-902	amended	Ch. 369	HB 122
19-3-904	amended	Ch. 369	HB 122
19-3-906	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-1002	amended	Ch. 369	HB 122
19-3-1008	amended	Ch. 369	HB 122
19-3-1106	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-1201	amended	Ch. 99	HB 70
19-3-1202	amended	Ch. 99	HB 70
19-3-1203	amended	Ch. 99	HB 70
19-3-1205	amended	Ch. 369	HB 122
19-3-1501	amended	Ch. 99	HB 70

MONTANA SESSION LAWS 2011

1996

19-3-1606	repealed	Ch. 99	HB 70
19-3-2114	amended	Ch. 99	HB 70
19-3-2117	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-2141	amended	Ch. 369	HB 122
19-5-301	amended	Ch. 335	HB 587
19-5-701	amended	Ch. 99	HB 70
19-7-101	amended	Ch. 155	HB 135
19-7-301	amended	Ch. 99	HB 70
19-7-302	amended	Ch. 99	HB 70
19-7-1001	amended	Ch. 99	HB 70
19-8-101	amended	Ch. 99	HB 70
	amended	Ch. 154	HB 134
19-8-601	amended	Ch. 99	HB 70
19-8-604	repealed	Ch. 99	HB 70
19-8-801	amended	Ch. 99	HB 70
19-8-1003	amended	Ch. 99	HB 70
19-13-301	amended	Ch. 99	HB 70
19-13-1101	enacted	Ch. 99	HB 70
19-17-102	amended	Ch. 64	HB 119
19-17-103	renumbered 19-17-205	Ch. 64	HB 119
19-17-104	repealed	Ch. 64	HB 119
19-17-106	amended	Ch. 64	HB 119
19-17-108	amended	Ch. 64	HB 119
19-17-109	enacted	Ch. 64	HB 119
19-17-110	enacted	Ch. 64	HB 119
19-17-111	enacted	Ch. 64	HB 119
19-17-112	enacted	Ch. 64	HB 119
19-17-113	enacted	Ch. 64	HB 119
19-17-201	amended	Ch. 64	HB 119
19-17-203	amended	Ch. 64	HB 119
19-17-204	amended	Ch. 64	HB 119
19-17-205	formerly 19-17-103	Ch. 64	HB 119
19-17-401	amended	Ch. 64	HB 119
19-17-402	repealed	Ch. 64	HB 119
19-17-403	amended	Ch. 64	HB 119
19-17-404	amended	Ch. 64	HB 119
	amended	Ch. 195	SB 223
19-17-408	renumbered 19-17-604	Ch. 64	HB 119
19-17-409	renumbered 19-17-605	Ch. 64	HB 119
19-17-410	renumbered 19-17-603	Ch. 64	HB 119
19-17-411	amended	Ch. 64	HB 119
19-17-412	enacted	Ch. 64	HB 119
19-17-501	amended	Ch. 64	HB 119
19-17-502	amended	Ch. 64	HB 119
19-17-503	amended	Ch. 64	HB 119
19-17-504	repealed	Ch. 64	HB 119
19-17-505	repealed	Ch. 64	HB 119
19-17-506	amended	Ch. 64	HB 119
19-17-601	enacted	Ch. 64	HB 119
19-17-602	enacted	Ch. 64	HB 119
19-17-603	formerly 19-17-410	Ch. 64	HB 119
19-17-604	formerly 19-17-408	Ch. 64	HB 119
19-17-605	formerly 19-17-409	Ch. 64	HB 119
19-17-606	enacted	Ch. 64	HB 119
19-20-101	amended	Ch. 59	HB 86
19-20-102	amended	Ch. 59	HB 86
19-20-203	amended	Ch. 59	HB 86
19-20-208	amended	Ch. 59	HB 86
	amended	Ch. 151	HB 116
19-20-305	amended	Ch. 59	HB 86
19-20-402	amended	Ch. 151	HB 116
19-20-403	amended	Ch. 151	HB 116

CODE SECTIONS AFFECTED

19-20-404	amended	Ch. 151	HB 116
19-20-405	amended	Ch. 59	HB 86
19-20-408	amended	Ch. 151	HB 116
19-20-410	amended	Ch. 151	HB 116
19-20-416	amended	Ch. 151	HB 116
19-20-427	amended	Ch. 151	HB 116
19-20-701	amended	Ch. 59	HB 86
19-20-702	amended	Ch. 59	HB 86
19-20-703	amended	Ch. 59	HB 86
19-20-705	amended	Ch. 59	HB 86
19-20-715	amended	Ch. 59	HB 86
	amended	Ch. 151	HB 116
19-20-717	amended	Ch. 59	HB 86
19-20-720	repealed	Ch. 59	HB 86
19-20-721	amended	Ch. 59	HB 86
19-20-731	amended	Ch. 59	HB 86
	amended	Ch. 151	HB 116
19-20-733	amended	Ch. 59	HB 86
19-20-802	amended	Ch. 151	HB 116
19-20-805	amended	Ch. 59	HB 86
19-20-1001	amended	Ch. 59	HB 86
19-20-1002	amended	Ch. 59	HB 86
19-20-1003	amended	Ch. 59	HB 86
19-20-1101	amended	Ch. 59	HB 86
19-21-203	amended	Ch. 273	SB 138
19-21-214	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
20-1-213	amended	Ch. 15	HB 208
20-1-303	amended	Ch. 193	SB 208
20-3-205	amended	Ch. 152	HB 123
20-3-209	amended	Ch. 152	HB 123
20-3-305	amended	Ch. 271	HB 327
20-3-307	amended	Ch. 271	HB 327
20-3-313	amended	Ch. 271	HB 327
20-3-321	amended	Ch. 14	HB 204
	amended	Ch. 271	HB 327
20-3-332	amended	Ch. 14	HB 204
20-3-351	amended	Ch. 14	HB 204
20-3-352	amended	Ch. 14	HB 204
20-3-363	amended	Ch. 418	SB 329
20-5-321	amended	Ch. 211	HB 288
20-5-502	amended	Ch. 211	HB 288
20-5-503	amended	Ch. 211	HB 288
20-6-630	enacted	Ch. 132	HB 319
20-7-102	amended	Ch. 418	SB 329
20-7-103	enacted	Ch. 418	SB 329
20-7-104	enacted	Ch. 418	SB 329
20-7-334	amended	Ch. 337	HB 611
20-7-401	amended	Ch. 44	SB 73
20-7-411	amended	Ch. 44	SB 73
20-7-420	amended	Ch. 211	HB 288
20-7-702	amended	Ch. 171	HB 421
20-7-705	amended	Ch. 152	HB 123
20-7-712	amended	Ch. 171	HB 421
20-7-1201	amended	Ch. 19	SB 31
	amended	Ch. 418	SB 329
20-9-104	amended	Ch. 418	SB 329
20-9-115	amended	Ch. 152	HB 123
20-9-121	amended	Ch. 152	HB 123
20-9-131	amended	Ch. 152	HB 123
20-9-134	amended	Ch. 152	HB 123
20-9-141	amended	Ch. 152	HB 123
20-9-142	amended	Ch. 152	HB 123

MONTANA SESSION LAWS 2011

1998

20-9-151	amended	Ch. 152	HB 123
20-9-152	amended	Ch. 152	HB 123
20-9-161	amended	Ch. 418	SB 329
20-9-201	amended	Ch. 418	SB 329
20-9-204	amended	Ch. 418	SB 329
20-9-208	amended	Ch. 418	SB 329
20-9-211	repealed	Ch. 152	HB 123
20-9-213	amended	Ch. 152	HB 123
20-9-235	amended	Ch. 19	SB 31
20-9-306	amended	Ch. 418	SB 329
20-9-308	amended	Ch. 418	SB 329
20-9-310	enacted	Ch. 418	SB 329
20-9-323	enacted	Ch. 418	SB 329
20-9-342	amended	Ch. 93	SB 38
20-9-353	amended	Ch. 418	SB 329
20-9-366	amended	Ch. 261	SB 219
20-9-406	amended	Ch. 271	HB 327
20-9-421	amended	Ch. 25	HB 182
20-9-426	amended	Ch. 271	HB 327
20-9-427	amended	Ch. 271	HB 327
20-9-428	amended	Ch. 271	HB 327
20-9-429	amended	Ch. 253	HB 538
20-9-430	amended	Ch. 253	HB 538
20-9-431	amended	Ch. 253	HB 538
20-9-432	amended	Ch. 253	HB 538
20-9-439	amended	Ch. 152	HB 123
20-9-471	amended	Ch. 25	HB 182
20-9-501	amended	Ch. 152	HB 123
	amended	Ch. 411	SB 372
20-9-503	amended	Ch. 152	HB 123
20-9-506	amended	Ch. 152	HB 123
20-9-507	amended	Ch. 418	SB 329
20-9-516	amended	Ch. 371	HB 165
	amended	Ch. 418	SB 329
20-9-517	enacted	Ch. 418	SB 329
20-9-518	enacted	Ch. 418	SB 329
20-9-533	amended	Ch. 152	HB 123
20-9-534	amended	Ch. 152	HB 123
20-9-604	amended	Ch. 152	HB 123
20-9-630	amended	Ch. 411	SB 372
	amended (voided by sec. 13, Ch. 411)	Ch. 418	SB 329
20-10-144	amended	Ch. 152	HB 123
20-10-146	amended	Ch. 152	HB 123
	amended	Ch. 411	SB 372
20-10-147	amended	Ch. 152	HB 123
	amended	Ch. 418	SB 329
20-15-313	amended	Ch. 152	HB 123
20-25-229	amended	Ch. 300	SB 195
20-25-426	amended	Ch. 202	SB 355
20-25-455	enacted	Ch. 202	SB 355
20-25-456	enacted	Ch. 202	SB 355
20-25-1401	enacted	Ch. 199	SB 280
20-25-1403	enacted	Ch. 199	SB 280
20-25-1404	enacted	Ch. 199	SB 280
20-26-603	amended	Ch. 140	HB 467
22-3-115	enacted	Ch. 358	HB 477
22-3-422	amended	Ch. 187	SB 3
22-3-423	amended	Ch. 187	SB 3
22-3-424	amended	Ch. 187	SB 3
23-1-105	amended	Ch. 209	HB 213
	amended	Ch. 247	HB 277
	amended	Ch. 326	HB 370
23-1-116	amended	Ch. 233	SB 43

23-1-117	amended	Ch. 233	SB 43
23-1-118	amended	Ch. 233	SB 43
23-1-128	amended	Ch. 191	SB 160
23-2-657	enacted	Ch. 157	HB 225
23-2-824	enacted	Ch. 106	HB 273
23-4-101	amended	Ch. 294	SB 16
23-4-105	amended	Ch. 294	SB 16
23-4-201	amended	Ch. 294	SB 16
23-4-202	amended	Ch. 294	SB 16
23-5-112	amended	Ch. 66	HB 127
23-5-412	amended	Ch. 66	HB 127
23-5-602	amended	Ch. 121	SB 361
23-5-603	amended	Ch. 121	SB 361
23-5-607	amended	Ch. 121	SB 361
23-5-608	amended	Ch. 66	HB 127
	amended	Ch. 121	SB 361
23-5-611	amended	Ch. 121	SB 361
23-5-621	amended	Ch. 121	SB 361
23-7-311	amended	Ch. 40	SB 51
25-1-104	enacted	Ch. 17	SB 021
25-4-203	amended	Ch. 238	SB 337
25-9-101	amended	Ch. 17	SB 21
25-9-608	amended	Ch. 19	SB 31
25-33-301	amended	Ch. 38	SB 41
25-35-502	amended	Ch. 284	SB 238
25-35-503	amended	Ch. 284	SB 238
25-35-606	amended	Ch. 284	SB 238
26-1-805	amended	Ch. 194	SB 210
26-1-1101	enacted	Ch. 352	SB 354
26-1-1102	enacted	Ch. 352	SB 354
26-1-1103	enacted	Ch. 352	SB 354
26-1-1104	enacted	Ch. 352	SB 354
26-1-1105	enacted	Ch. 352	SB 354
26-1-1106	enacted	Ch. 352	SB 354
26-1-1107	enacted	Ch. 352	SB 354
26-1-1108	enacted	Ch. 352	SB 354
27-1-717	amended	Ch. 48	HB 268
27-30-101	amended	Ch. 299	SB 173
30-10-103	amended	Ch. 19	SB 31
	amended	Ch. 58	HB 81
30-10-104	amended	Ch. 19	SB 31
30-10-105	amended	Ch. 9	HB 44
30-10-115	amended	Ch. 227	HB 125
30-10-209	amended	Ch. 227	HB 125
30-10-305	amended	Ch. 58	HB 81
30-10-308	amended	Ch. 227	HB 125
30-10-1001	enacted	Ch. 58	HB 81
30-10-1002	enacted	Ch. 58	HB 81
30-10-1003	enacted	Ch. 58	HB 81
30-10-1004	enacted	Ch. 58	HB 81
30-10-1005	enacted	Ch. 58	HB 81
30-10-1006	enacted	Ch. 58	HB 81
30-10-1007	enacted	Ch. 58	HB 81
30-10-1008	enacted	Ch. 58	HB 81
30-13-202	amended	Ch. 110	HB 428
30-13-203	amended	Ch. 26	SB 63
30-13-206	amended	Ch. 26	SB 63
30-13-207	amended	Ch. 26	SB 63
30-13-213	amended	Ch. 26	SB 63
30-13-217	amended	Ch. 26	SB 63
30-13-313	amended	Ch. 26	SB 63
30-13-338	amended	Ch. 19	SB 31
30-14-122	amended	Ch. 128	HB 212

MONTANA SESSION LAWS 2011

2000

30-14-1726	amended	Ch. 42	SB 60
30-14-1727	amended	Ch. 42	SB 60
30-16-301	amended	Ch. 26	SB 63
31-1-107	amended	Ch. 108	HB 348
31-1-202	amended	Ch. 317	HB 90
32-1-220	amended	Ch. 49	SB 64
32-1-372	amended	Ch. 49	SB 64
32-1-381	amended	Ch. 49	SB 64
32-1-422	amended	Ch. 9	HB 44
32-1-429	amended	Ch. 138	HB 432
32-2-406	amended	Ch. 19	SB 31
32-3-609	amended	Ch. 138	HB 432
32-5-102	amended	Ch. 317	HB 90
32-7-103	amended	Ch. 317	HB 90
32-9-101	amended	Ch. 317	HB 90
32-9-102	amended	Ch. 317	HB 90
32-9-103	amended	Ch. 19	SB 31
	amended	Ch. 317	HB 90
32-9-104	amended	Ch. 317	HB 90
32-9-105	amended	Ch. 317	HB 90
32-9-106	amended	Ch. 317	HB 90
32-9-107	amended	Ch. 317	HB 90
32-9-112	amended	Ch. 317	HB 90
32-9-113	amended	Ch. 317	HB 90
32-9-114	repealed	Ch. 317	HB 90
32-9-116	amended	Ch. 317	HB 90
32-9-117	amended	Ch. 317	HB 90
32-9-118	amended	Ch. 317	HB 90
32-9-120	amended	Ch. 317	HB 90
32-9-121	amended	Ch. 317	HB 90
32-9-122	amended	Ch. 317	HB 90
32-9-123	amended	Ch. 317	HB 90
32-9-124	amended	Ch. 317	HB 90
32-9-125	amended	Ch. 317	HB 90
32-9-126	amended	Ch. 317	HB 90
32-9-127	repealed	Ch. 317	HB 90
32-9-128	amended	Ch. 317	HB 90
32-9-129	amended	Ch. 317	HB 90
32-9-130	amended	Ch. 317	HB 90
32-9-133	amended	Ch. 317	HB 90
32-9-145	amended	Ch. 317	HB 90
32-9-148	amended	Ch. 317	HB 90
32-9-150	amended	Ch. 317	HB 90
32-9-151	amended	Ch. 317	HB 90
32-9-160	amended	Ch. 317	HB 90
32-9-165	enacted	Ch. 317	HB 90
32-9-166	enacted	Ch. 317	HB 90
32-9-167	enacted	Ch. 317	HB 90
32-9-168	enacted	Ch. 317	HB 90
32-9-169	enacted	Ch. 317	HB 90
32-9-170	enacted	Ch. 317	HB 90
33-1-102	amended	Ch. 54	HB 53
	amended	Ch. 199	SB 280
	amended	Ch. 237	SB 278
	amended	Ch. 351	SB 351
33-1-311	amended	Ch. 227	HB 125
33-2-301	amended	Ch. 350	SB 331
33-2-302	amended	Ch. 350	SB 331
33-2-303	amended	Ch. 350	SB 331
33-2-305	amended	Ch. 350	SB 331
33-2-307	amended	Ch. 350	SB 331
33-2-310	amended	Ch. 350	SB 331
33-2-311	amended	Ch. 350	SB 331

33-2-312	amended	Ch. 350	SB 331
33-2-313	amended	Ch. 350	SB 331
33-2-316	amended	Ch. 350	SB 331
33-2-317	amended	Ch. 350	SB 331
33-2-318	enacted	Ch. 350	SB 331
33-2-319	enacted	Ch. 350	SB 331
33-2-321	amended	Ch. 350	SB 331
33-2-322	enacted	Ch. 350	SB 331
33-2-323	enacted	Ch. 350	SB 331
33-2-601	amended	Ch. 227	HB 125
33-2-609	repealed	Ch. 227	HB 125
33-2-1323	amended	Ch. 19	SB 31
33-2-1501	amended	Ch. 227	HB 125
33-2-1903	amended	Ch. 227	HB 125
33-2-1904	amended	Ch. 227	HB 125
33-3-431	amended	Ch. 108	HB 348
33-4-309	amended	Ch. 227	HB 125
33-10-201	amended	Ch. 27	SB 78
33-10-202	amended	Ch. 27	SB 78
33-10-205	amended	Ch. 27	SB 78
33-10-210	amended	Ch. 27	SB 78
33-10-216	amended	Ch. 27	SB 78
33-10-217	amended	Ch. 27	SB 78
33-10-219	repealed	Ch. 27	SB 78
33-10-220	repealed	Ch. 27	SB 78
33-10-222	amended	Ch. 27	SB 78
33-10-223	amended	Ch. 27	SB 78
33-10-224	amended	Ch. 27	SB 78
33-10-225	amended	Ch. 27	SB 78
33-10-226	amended	Ch. 27	SB 78
33-10-227	amended	Ch. 27	SB 78
33-10-228	repealed	Ch. 27	SB 78
33-16-201	amended	Ch. 239	SB 352
33-18-210	amended	Ch. 239	SB 352
33-18-224	amended	Ch. 290	HB 265
33-18-605	amended	Ch. 227	HB 125
	amended	Ch. 314	HB 29
33-20-1112	enacted	Ch. 163	HB 487
33-20-1501	amended	Ch. 52	SB 186
33-22-103	repealed	Ch. 227	HB 125
33-22-114	amended	Ch. 173	HB 547
33-22-129	amended	Ch. 54	HB 53
33-22-134	amended	Ch. 54	HB 53
33-22-136	amended	Ch. 54	HB 53
33-22-508	amended	Ch. 227	HB 125
33-22-1501	amended	Ch. 133	HB 324
33-22-1504	amended	Ch. 133	HB 324
33-22-1512	amended	Ch. 133	HB 324
33-22-1521	amended	Ch. 133	HB 324
33-22-1803	amended	Ch. 227	HB 125
33-22-1821	amended	Ch. 227	HB 125
33-22-1827	repealed	Ch. 227	HB 125
33-22-1828	repealed	Ch. 227	HB 125
33-22-2002	amended	Ch. 227	HB 125
33-22-2004	amended	Ch. 227	HB 125
33-22-2006	amended	Ch. 227	HB 125
33-22-2008	amended	Ch. 227	HB 125
33-28-101	amended	Ch. 75	HB 419
33-28-102	amended	Ch. 75	HB 419
	amended	Ch. 227	HB 125
33-28-104	amended	Ch. 75	HB 419
33-28-107	amended	Ch. 75	HB 419
	amended	Ch. 227	HB 125

MONTANA SESSION LAWS 2011

2002

33-28-108	amended	Ch. 227	HB 125
33-28-202	amended	Ch. 75	HB 419
33-28-207	amended	Ch. 227	HB 125
33-28-301	amended	Ch. 75	HB 419
33-28-302	amended	Ch. 75	HB 419
33-28-304	amended	Ch. 75	HB 419
33-31-102	amended	Ch. 173	HB 547
	amended	Ch. 346	SB 221
33-31-115	amended	Ch. 351	SB 351
33-31-201	amended	Ch. 346	SB 221
35-1-216	amended	Ch. 26	SB 63
35-1-310	amended	Ch. 110	HB 428
35-1-534	amended	Ch. 322	HB 249
35-1-1028	amended	Ch. 26	SB 63
35-1-1029	amended	Ch. 26	SB 63
35-1-1104	amended	Ch. 26	SB 63
35-2-213	amended	Ch. 26	SB 63
35-2-822	amended	Ch. 26	SB 63
35-2-904	amended	Ch. 26	SB 63
35-3-209	amended	Ch. 26	SB 63
35-8-202	amended	Ch. 26	SB 63
35-8-208	amended	Ch. 26	SB 63
35-8-210	repealed	Ch. 26	SB 63
35-8-912	amended (voided by sec. 3, Ch. 355)	Ch. 26	SB 63
	amended	Ch. 355	SB 429
35-8-1003	amended	Ch. 26	SB 63
35-10-102	amended	Ch. 26	SB 63
35-10-701	amended	Ch. 26	SB 63
35-10-715	enacted	Ch. 26	SB 63
35-10-716	enacted	Ch. 26	SB 63
35-10-717	enacted	Ch. 26	SB 63
35-10-718	enacted	Ch. 26	SB 63
35-10-719	enacted	Ch. 26	SB 63
35-10-720	enacted	Ch. 26	SB 63
35-10-721	enacted	Ch. 26	SB 63
35-10-722	enacted	Ch. 26	SB 63
35-10-723	enacted	Ch. 26	SB 63
35-10-724	enacted	Ch. 26	SB 63
35-12-502	amended	Ch. 216	HB 535
35-12-503	repealed	Ch. 216	HB 535
35-12-504	amended	Ch. 216	HB 535
35-12-505	amended	Ch. 216	HB 535
35-12-506	amended	Ch. 216	HB 535
35-12-508	amended	Ch. 216	HB 535
35-12-509	amended	Ch. 216	HB 535
35-12-510	amended	Ch. 216	HB 535
35-12-511	enacted	Ch. 216	HB 535
35-12-512	enacted	Ch. 216	HB 535
35-12-513	enacted	Ch. 216	HB 535
35-12-514	enacted	Ch. 216	HB 535
35-12-515	enacted	Ch. 216	HB 535
35-12-516	enacted	Ch. 216	HB 535
35-12-522	formerly 35-12-1308	Ch. 216	HB 535
35-12-601	amended	Ch. 26	SB 63
	amended	Ch. 216	HB 535
35-12-602	amended	Ch. 216	HB 535
35-12-603	amended	Ch. 216	HB 535
35-12-604	amended	Ch. 216	HB 535
35-12-605	amended	Ch. 216	HB 535
35-12-606	repealed	Ch. 216	HB 535
35-12-607	amended	Ch. 216	HB 535
35-12-608	repealed	Ch. 216	HB 535
35-12-609	repealed	Ch. 216	HB 535

35-12-610	amended	Ch. 26	SB 63
	amended	Ch. 216	HB 535
35-12-614	enacted	Ch. 216	HB 535
35-12-616	enacted	Ch. 216	HB 535
35-12-617	enacted	Ch. 216	HB 535
35-12-618	enacted	Ch. 216	HB 535
35-12-701	amended	Ch. 216	HB 535
35-12-702	repealed	Ch. 216	HB 535
35-12-703	amended	Ch. 216	HB 535
35-12-704	amended	Ch. 216	HB 535
35-12-705	amended	Ch. 216	HB 535
35-12-706	enacted	Ch. 216	HB 535
35-12-707	enacted	Ch. 216	HB 535
35-12-801	amended	Ch. 216	HB 535
35-12-802	repealed	Ch. 216	HB 535
35-12-803	amended	Ch. 216	HB 535
35-12-804	repealed	Ch. 216	HB 535
35-12-805	repealed	Ch. 216	HB 535
35-12-806	enacted	Ch. 216	HB 535
35-12-807	enacted	Ch. 216	HB 535
35-12-808	enacted	Ch. 216	HB 535
35-12-809	enacted	Ch. 216	HB 535
35-12-810	enacted	Ch. 216	HB 535
35-12-811	enacted	Ch. 216	HB 535
35-12-901	amended	Ch. 216	HB 535
35-12-902	amended	Ch. 216	HB 535
35-12-903	repealed	Ch. 216	HB 535
35-12-904	repealed	Ch. 216	HB 535
35-12-905	enacted	Ch. 216	HB 535
35-12-1001	amended	Ch. 216	HB 535
35-12-1002	repealed	Ch. 216	HB 535
35-12-1003	repealed	Ch. 216	HB 535
35-12-1004	repealed	Ch. 216	HB 535
35-12-1005	amended	Ch. 216	HB 535
35-12-1006	amended	Ch. 216	HB 535
35-12-1007	repealed	Ch. 216	HB 535
35-12-1008	repealed	Ch. 216	HB 535
35-12-1009	enacted	Ch. 216	HB 535
35-12-1010	enacted	Ch. 216	HB 535
35-12-1011	enacted	Ch. 216	HB 535
35-12-1016	enacted	Ch. 216	HB 535
35-12-1017	enacted	Ch. 216	HB 535
35-12-1018	enacted	Ch. 216	HB 535
35-12-1019	enacted	Ch. 216	HB 535
35-12-1020	enacted	Ch. 216	HB 535
35-12-1021	enacted	Ch. 216	HB 535
35-12-1022	enacted	Ch. 216	HB 535
35-12-1101	repealed	Ch. 216	HB 535
35-12-1102	repealed	Ch. 216	HB 535
35-12-1103	amended	Ch. 216	HB 535
35-12-1104	repealed	Ch. 216	HB 535
35-12-1105	amended	Ch. 216	HB 535
35-12-1106	enacted	Ch. 216	HB 535
35-12-1107	enacted	Ch. 216	HB 535
35-12-1201	amended	Ch. 216	HB 535
35-12-1202	amended	Ch. 216	HB 535
35-12-1203	repealed	Ch. 216	HB 535
35-12-1204	repealed	Ch. 216	HB 535
35-12-1205	enacted	Ch. 216	HB 535
35-12-1211	enacted	Ch. 216	HB 535
35-12-1212	enacted	Ch. 216	HB 535
35-12-1213	enacted	Ch. 216	HB 535
35-12-1214	enacted	Ch. 216	HB 535

MONTANA SESSION LAWS 2011

2004

35-12-1215	enacted	Ch. 216	HB 535
35-12-1216	enacted	Ch. 216	HB 535
35-12-1301	amended	Ch. 216	HB 535
35-12-1302	amended	Ch. 26	SB 63
	amended	Ch. 216	HB 535
35-12-1303	repealed	Ch. 216	HB 535
35-12-1304	repealed	Ch. 216	HB 535
35-12-1305	repealed	Ch. 216	HB 535
35-12-1306	repealed	Ch. 216	HB 535
35-12-1307	amended	Ch. 216	HB 535
35-12-1308	amended and renumbered 35-12-522	Ch. 216	HB 535
35-12-1309	enacted	Ch. 216	HB 535
35-12-1310	enacted	Ch. 216	HB 535
35-12-1311	enacted	Ch. 26	SB 63
35-12-1312	enacted	Ch. 216	HB 535
35-12-1313	enacted	Ch. 216	HB 535
35-12-1401	amended	Ch. 216	HB 535
35-12-1402	amended	Ch. 216	HB 535
35-12-1403	amended	Ch. 216	HB 535
35-12-1404	amended	Ch. 216	HB 535
35-12-1405	enacted	Ch. 216	HB 535
35-12-1501	enacted	Ch. 216	HB 535
35-12-1502	enacted	Ch. 216	HB 535
35-12-1503	enacted	Ch. 216	HB 535
35-12-1504	enacted	Ch. 216	HB 535
35-12-1505	enacted	Ch. 216	HB 535
35-12-1511	enacted	Ch. 216	HB 535
35-12-1512	enacted	Ch. 216	HB 535
35-12-1513	enacted	Ch. 216	HB 535
35-12-1514	enacted	Ch. 216	HB 535
35-12-1515	enacted	Ch. 216	HB 535
35-12-1520	enacted	Ch. 216	HB 535
35-12-1521	enacted	Ch. 216	HB 535
35-12-1522	enacted	Ch. 216	HB 535
35-16-303	amended	Ch. 19	SB 31
35-19-101	repealed	Ch. 67	HB 169
35-19-102	repealed	Ch. 67	HB 169
35-19-104	repealed	Ch. 67	HB 169
35-19-105	repealed	Ch. 67	HB 169
35-19-106	repealed	Ch. 67	HB 169
35-19-107	amended	Ch. 20	SB 62
	repealed	Ch. 67	HB 169
35-19-108	repealed	Ch. 67	HB 169
35-19-201	repealed	Ch. 67	HB 169
35-19-202	repealed	Ch. 67	HB 169
35-19-203	repealed	Ch. 67	HB 169
35-19-204	repealed	Ch. 67	HB 169
35-19-205	repealed	Ch. 67	HB 169
35-19-301	repealed	Ch. 67	HB 169
35-19-302	repealed	Ch. 67	HB 169
35-19-303	repealed	Ch. 67	HB 169
35-19-304	repealed	Ch. 67	HB 169
35-19-305	repealed	Ch. 67	HB 169
35-19-306	repealed	Ch. 67	HB 169
35-19-307	repealed	Ch. 67	HB 169
35-19-308	repealed	Ch. 67	HB 169
35-19-309	repealed	Ch. 67	HB 169
35-19-310	repealed	Ch. 67	HB 169
35-19-311	amended and repealed	Ch. 67	HB 169
35-19-312	repealed	Ch. 67	HB 169
35-19-313	repealed	Ch. 67	HB 169
35-19-314	repealed	Ch. 67	HB 169
35-19-315	repealed	Ch. 67	HB 169

37-1-131	amended	Ch. 51	SB 165
	amended	Ch. 122	HB 25
37-1-142	enacted	Ch. 330	HB 525
37-1-304	amended	Ch. 100	HB 94
37-1-305	amended	Ch. 100	HB 94
37-1-307	amended	Ch. 100	HB 94
37-1-316	amended	Ch. 419	SB 423
37-2-202	enacted	Ch. 122	HB 25
37-2-316	enacted	Ch. 122	HB 25
37-2-401	enacted	Ch. 291	HB 416
37-2-402	enacted	Ch. 291	HB 416
37-2-403	enacted	Ch. 291	HB 416
37-2-404	enacted	Ch. 291	HB 416
37-2-409	enacted	Ch. 291	HB 416
37-2-410	enacted	Ch. 291	HB 416
37-3-203	amended	Ch. 122	HB 25
	amended	Ch. 124	HB 82
37-3-208	repealed	Ch. 122	HB 25
37-3-310	amended	Ch. 100	HB 94
37-3-343	amended	Ch. 419	SB 423
37-3-347	amended	Ch. 419	SB 423
37-3-401	amended	Ch. 122	HB 25
37-4-101	amended	Ch. 100	HB 94
37-4-311	amended	Ch. 122	HB 25
37-4-511	amended	Ch. 100	HB 94
37-6-302	amended	Ch. 100	HB 94
37-7-101	amended	Ch. 119	SB 189
	amended	Ch. 241	HB 83
37-7-105	enacted	Ch. 119	SB 189
37-7-201	amended	Ch. 122	HB 25
37-7-204	repealed	Ch. 100	HB 94
37-7-1501	enacted	Ch. 241	HB 83
37-7-1502	enacted	Ch. 241	HB 83
37-7-1503	enacted	Ch. 241	HB 83
37-7-1504	enacted	Ch. 241	HB 83
37-7-1505	enacted	Ch. 241	HB 83
37-7-1506	enacted	Ch. 241	HB 83
37-7-1507	enacted	Ch. 241	HB 83
37-7-1508	enacted	Ch. 241	HB 83
37-7-1509	enacted	Ch. 241	HB 83
37-7-1510	enacted	Ch. 241	HB 83
37-7-1511	enacted	Ch. 241	HB 83
37-7-1512	enacted	Ch. 241	HB 83
37-7-1513	enacted	Ch. 241	HB 83
37-7-1514	enacted	Ch. 241	HB 83
37-8-102	amended	Ch. 392	HB 377
37-8-202	amended	Ch. 122	HB 25
	amended	Ch. 173	HB 547
37-8-422	amended	Ch. 392	HB 377
37-8-423	enacted	Ch. 392	HB 377
37-8-424	enacted	Ch. 392	HB 377
37-8-425	enacted	Ch. 392	HB 377
37-8-426	enacted	Ch. 392	HB 377
37-15-102	amended	Ch. 342	SB 132
37-15-103	amended	Ch. 19	SB 31
	amended	Ch. 342	SB 132
37-16-103	amended	Ch. 342	SB 132
37-16-401	amended	Ch. 342	SB 132
37-16-405	amended	Ch. 342	SB 132
37-19-904	amended	Ch. 158	HB 256
37-31-305	amended	Ch. 100	HB 94
37-31-309	amended	Ch. 100	HB 94
37-31-312	amended	Ch. 100	HB 94

MONTANA SESSION LAWS 2011

2006

37-35-102	amended	Ch. 72	HB 356
37-47-201	amended	Ch. 328	HB 458
37-47-202	amended	Ch. 100	HB 94
37-47-302	amended	Ch. 179	SB 118
37-47-304	amended	Ch. 179	SB 118
37-47-310	amended	Ch. 100	HB 94
37-47-316	amended	Ch. 328	HB 458
37-47-317	repealed	Ch. 328	HB 458
37-47-318	amended	Ch. 328	HB 458
37-47-351	amended	Ch. 100	HB 94
37-51-204	amended	Ch. 100	HB 94
37-51-302	amended	Ch. 79	SB 256
37-51-305	amended	Ch. 79	SB 256
37-51-308	amended	Ch. 79	SB 256
	amended	Ch. 100	HB 94
37-51-309	amended	Ch. 79	SB 256
37-51-602	amended	Ch. 79	SB 256
37-51-605	amended	Ch. 100	HB 94
37-54-102	amended	Ch. 270	HB 188
37-54-105	amended	Ch. 270	HB 188
37-54-501	enacted	Ch. 270	HB 188
37-54-502	enacted	Ch. 270	HB 188
37-54-503	enacted	Ch. 270	HB 188
37-54-504	enacted	Ch. 270	HB 188
37-54-505	enacted	Ch. 270	HB 188
37-54-506	enacted	Ch. 270	HB 188
37-54-507	enacted	Ch. 270	HB 188
37-54-508	enacted	Ch. 270	HB 188
37-54-509	enacted	Ch. 270	HB 188
37-54-510	enacted	Ch. 270	HB 188
37-54-511	enacted	Ch. 270	HB 188
37-54-512	enacted	Ch. 270	HB 188
37-54-513	enacted	Ch. 270	HB 188
37-54-514	enacted	Ch. 270	HB 188
37-54-515	enacted	Ch. 270	HB 188
37-54-516	enacted	Ch. 270	HB 188
37-54-517	enacted	Ch. 270	HB 188
37-54-518	enacted	Ch. 270	HB 188
37-54-519	enacted	Ch. 270	HB 188
37-60-101	amended	Ch. 100	HB 94
37-60-202	amended	Ch. 100	HB 94
37-60-303	amended	Ch. 100	HB 94
37-67-306	amended	Ch. 100	HB 94
37-67-312	amended	Ch. 100	HB 94
37-67-313	amended	Ch. 100	HB 94
39-2-206	amended	Ch. 315	HB 43
39-2-210	amended	Ch. 315	HB 43
39-2-313	amended	Ch. 315	HB 43
39-3-201	amended	Ch. 12	HB 84
39-3-213	amended	Ch. 12	HB 84
39-3-406	amended	Ch. 12	HB 84
39-4-103	amended	Ch. 212	HB 300
39-4-104	amended	Ch. 212	HB 300
39-4-107	amended	Ch. 128	HB 212
	amended	Ch. 212	HB 300
39-4-109	amended	Ch. 212	HB 300
39-11-103	amended	Ch. 348	SB 294
39-11-201	repealed	Ch. 348	SB 294
39-11-202	amended	Ch. 348	SB 294
39-31-107	amended	Ch. 10	HB 57
39-51-201	amended	Ch. 98	SB 342
	amended	Ch. 123	HB 80
39-51-204	amended	Ch. 123	HB 80

39-51-301	amended	Ch. 123	HB 80
39-51-1212	amended	Ch. 123	HB 80
39-51-1214	amended	Ch. 123	HB 80
39-51-2101	amended	Ch. 123	HB 80
39-51-2111	amended	Ch. 123	HB 80
39-51-2302	amended	Ch. 123	HB 80
39-51-3206	amended	Ch. 123	HB 80
39-51-3208	enacted	Ch. 123	HB 80
39-71-105	amended	Ch. 167	HB 334
39-71-107	amended	Ch. 150	HB 110
39-71-116	amended	Ch. 167	HB 334
39-71-118	amended	Ch. 167	HB 334
	amended	Ch. 255	HB 552
	amended	Ch. 262	SB 242
39-71-123	amended	Ch. 255	HB 552
39-71-225	amended	Ch. 167	HB 334
39-71-315	amended	Ch. 167	HB 334
39-71-320	amended	Ch. 167	HB 334
39-71-401	amended	Ch. 200	SB 287
39-71-403	amended	Ch. 167	HB 334
39-71-407	amended	Ch. 167	HB 334
	amended	Ch. 315	HB 43
39-71-417	amended	Ch. 200	SB 287
39-71-418	amended	Ch. 150	HB 110
39-71-703	amended	Ch. 36	HB 359
	amended	Ch. 167	HB 334
39-71-704	amended	Ch. 167	HB 334
39-71-711	amended	Ch. 167	HB 334
39-71-717	enacted	Ch. 167	HB 334
39-71-721	amended	Ch. 36	HB 359
	amended	Ch. 167	HB 334
39-71-736	amended	Ch. 167	HB 334
39-71-741	amended	Ch. 36	HB 359
	amended	Ch. 167	HB 334
39-71-1011	amended	Ch. 167	HB 334
39-71-1025	amended	Ch. 167	HB 334
39-71-1031	amended	Ch. 167	HB 334
39-71-1036	enacted	Ch. 167	HB 334
39-71-1041	enacted	Ch. 167	HB 334
39-71-1042	enacted	Ch. 167	HB 334
39-71-1043	enacted	Ch. 167	HB 334
39-71-1049	enacted	Ch. 167	HB 334
39-71-1050	enacted	Ch. 167	HB 334
39-71-1051	enacted	Ch. 167	HB 334
39-71-1101	amended	Ch. 167	HB 334
39-71-1102	amended	Ch. 167	HB 334
39-71-1106	amended	Ch. 167	HB 334
39-71-2215	amended	Ch. 150	HB 110
39-71-2352	amended (line-item vetoed)	Ch. 312	HB 604
39-71-2361	amended	Ch. 167	HB 334
40-15-201	amended	Ch. 37	SB 26
41-1-405	amended (not codified — referendum)	Ch. 307	HB 627
41-3-103	amended	Ch. 223	SB 304
41-3-201	amended	Ch. 223	SB 304
	amended	Ch. 278	HB 618
41-3-301	amended	Ch. 11	HB 74
	amended	Ch. 223	SB 304
41-3-425	amended	Ch. 343	SB 153
41-3-427	amended	Ch. 11	HB 74
	amended	Ch. 223	SB 304
41-3-432	amended	Ch. 223	SB 304
41-5-206	amended	Ch. 87	HB 126
41-5-216	amended	Ch. 419	SB 423

MONTANA SESSION LAWS 2011

2008

41-5-2003	amended	Ch. 95	SB 67
44-2-801	enacted	Ch. 159	HB 269
44-4-1201	enacted	Ch. 318	HB 106
44-4-1202	enacted	Ch. 318	HB 106
44-4-1203	enacted	Ch. 318	HB 106
44-4-1204	enacted	Ch. 318	HB 106
44-4-1205	enacted	Ch. 318	HB 106
44-4-1206	enacted	Ch. 318	HB 106
44-6-103	amended	Ch. 125	HB 117
44-12-102	amended	Ch. 156	HB 185
45-5-502	amended	Ch. 46	SB 152
45-6-101	amended	Ch. 258	SB 124
45-6-106	amended	Ch. 220	SB 180
45-6-203	amended	Ch. 258	SB 124
45-7-309	amended	Ch. 318	HB 106
45-8-221	enacted	Ch. 274	SB 149
45-8-317	amended	Ch. 384	SB 279
45-8-328	amended	Ch. 384	SB 279
45-8-351	amended	Ch. 384	SB 279
45-9-101	amended	Ch. 156	HB 185
45-9-102	amended	Ch. 156	HB 185
45-9-104	amended	Ch. 194	SB 210
45-9-110	amended	Ch. 156	HB 185
45-9-203	amended	Ch. 419	SB 423
46-5-224	amended	Ch. 283	SB 42
46-6-412	amended	Ch. 19	SB 31
46-8-101	amended	Ch. 344	SB 187
46-8-113	amended	Ch. 344	SB 187
46-8-114	amended	Ch. 344	SB 187
46-13-109	repealed	Ch. 130	HB 250
46-13-110	amended	Ch. 130	HB 250
46-17-311	amended	Ch. 38	SB 41
46-18-201	amended	Ch. 318	HB 106
46-18-202	amended	Ch. 419	SB 423
46-18-203	amended	Ch. 230	HB 548
46-23-103	amended	Ch. 102	HB 141
46-23-104	amended	Ch. 102	HB 141
46-23-109	amended	Ch. 102	HB 141
46-23-201	amended	Ch. 102	HB 141
	amended	Ch. 176	SB 76
46-23-202	amended	Ch. 102	HB 141
46-23-210	amended	Ch. 102	HB 141
46-23-215	amended	Ch. 102	HB 141
46-23-218	amended	Ch. 102	HB 141
46-23-301	amended	Ch. 102	HB 141
46-23-302	amended	Ch. 102	HB 141
46-23-306	amended	Ch. 102	HB 141
46-23-307	amended	Ch. 102	HB 141
46-23-1025	amended	Ch. 102	HB 141
46-30-411	amended	Ch. 39	SB 46
47-1-102	amended	Ch. 344	SB 187
47-1-103	amended	Ch. 24	HB 97
47-1-104	amended	Ch. 24	HB 97
	amended (not codified — referendum)	Ch. 307	HB 627
47-1-105	amended	Ch. 24	HB 97
	amended	Ch. 344	SB 187
47-1-110	amended	Ch. 31	HB 96
47-1-111	amended	Ch. 344	SB 187
47-1-118	enacted	Ch. 344	SB 187
47-1-201	amended	Ch. 24	HB 97
	amended	Ch. 394	HB 613
47-1-202	amended	Ch. 344	SB 187

47-1-205	amended	Ch. 24	HB 97
	amended	Ch. 344	SB 187
47-1-215	amended	Ch. 344	SB 187
47-1-216	amended	Ch. 24	HB 97
	amended	Ch. 344	SB 187
49-2-101	amended	Ch. 201	SB 290
49-2-203	amended	Ch. 205	HB 95
49-2-303	amended	Ch. 205	HB 95
49-2-305	amended	Ch. 205	HB 95
49-2-403	amended	Ch. 205	HB 95
49-2-504	amended	Ch. 205	HB 95
49-3-201	amended	Ch. 201	SB 290
49-4-509	amended	Ch. 30	HB 65
50-4-504	amended	Ch. 19	SB 31
50-6-320	enacted	Ch. 237	SB 278
50-15-114	amended	Ch. 19	SB 31
50-20-201	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-202	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-203	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-204	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-205	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-208	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-209	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-211	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-212	repealed (not codified — referendum)	Ch. 307	HB 627
50-20-215	repealed (not codified — referendum)	Ch. 307	HB 627
50-31-306	amended	Ch. 156	HB 185
50-31-310	amended	Ch. 156	HB 185
50-32-222	amended	Ch. 156	HB 185
50-40-103	amended	Ch. 7	HB 19
50-40-104	amended	Ch. 19	SB 31
50-40-201	amended	Ch. 19	SB 31
50-46-101	repealed	Ch. 419	SB 423
50-46-102	repealed	Ch. 419	SB 423
50-46-103	amended	Ch. 124	HB 82
	repealed	Ch. 419	SB 423
50-46-201	amended	Ch. 315	HB 43
	amended and repealed	Ch. 419	SB 423
50-46-202	amended	Ch. 124	HB 82
	amended and repealed	Ch. 419	SB 423
50-46-205	amended	Ch. 315	HB 43
	repealed	Ch. 419	SB 423
50-46-206	repealed	Ch. 419	SB 423
50-46-207	repealed	Ch. 419	SB 423
50-46-210	repealed	Ch. 419	SB 423
50-46-301	enacted	Ch. 419	SB 423
50-46-302	enacted	Ch. 419	SB 423
50-46-303	enacted	Ch. 419	SB 423
50-46-307	enacted	Ch. 419	SB 423
50-46-308	enacted	Ch. 419	SB 423
50-46-309	enacted	Ch. 419	SB 423
50-46-310	enacted	Ch. 419	SB 423
50-46-317	enacted	Ch. 419	SB 423
50-46-318	enacted	Ch. 419	SB 423
50-46-319	enacted	Ch. 419	SB 423
50-46-320	enacted	Ch. 419	SB 423
50-46-327	enacted	Ch. 419	SB 423
50-46-328	enacted	Ch. 419	SB 423
50-46-329	enacted	Ch. 419	SB 423
50-46-330	enacted	Ch. 419	SB 423
50-46-331	enacted	Ch. 419	SB 423
50-46-332	enacted	Ch. 419	SB 423
50-46-339	enacted	Ch. 419	SB 423

MONTANA SESSION LAWS 2011

2010

50-46-340	enacted	Ch. 419	SB 423
50-46-341	enacted	Ch. 419	SB 423
50-46-342	enacted	Ch. 419	SB 423
50-46-343	enacted	Ch. 419	SB 423
50-46-344	enacted	Ch. 419	SB 423
50-50-102	amended	Ch. 357	HB 258
50-50-103	amended	Ch. 208	HB 191
50-50-202	amended	Ch. 208	HB 191
50-51-101	amended	Ch. 334	HB 559
50-51-102	amended	Ch. 334	HB 559
	amended	Ch. 357	HB 258
50-51-103	amended	Ch. 334	HB 559
50-51-201	amended	Ch. 334	HB 559
50-51-401	amended	Ch. 334	HB 559
50-74-218	amended	Ch. 160	HB 315
50-74-307	amended	Ch. 160	HB 315
50-76-113	amended	Ch. 100	HB 94
52-2-308	amended	Ch. 377	HB 565
52-2-310	amended	Ch. 377	HB 565
52-2-311	amended	Ch. 377	HB 565
52-3-115	amended	Ch. 312	HB 604
53-1-203	amended	Ch. 21	SB 72
53-4-209	amended	Ch. 287	SB 385
53-4-210	amended	Ch. 361	SB 156
53-6-116	amended	Ch. 351	SB 351
53-6-124	amended	Ch. 397	SB 241
53-6-125	amended	Ch. 397	SB 241
53-6-126	repealed	Ch. 397	SB 241
53-6-702	amended	Ch. 346	SB 221
	amended (voided by sec. 4, Ch. 346)	Ch. 351	SB 351
53-6-703	repealed	Ch. 351	SB 351
53-6-704	amended	Ch. 351	SB 351
53-6-705	amended	Ch. 351	SB 351
53-6-707	amended	Ch. 351	SB 351
53-6-710	enacted	Ch. 351	SB 351
53-6-711	enacted	Ch. 351	SB 351
53-6-1001	amended	Ch. 19	SB 31
53-9-103	amended	Ch. 32	HB 114
53-9-123	amended	Ch. 32	HB 114
53-9-128	amended	Ch. 32	HB 114
53-10-203	amended	Ch. 327	HB 409
53-19-310	amended	Ch. 312	HB 604
53-20-221	amended	Ch. 123	HB 80
53-20-222	amended	Ch. 123	HB 80
53-21-153	repealed	Ch. 329	HB 518
53-21-701	amended	Ch. 351	SB 351
53-21-1203	amended	Ch. 232	SB 28
53-21-1301	enacted	Ch. 329	HB 518
53-21-1302	enacted	Ch. 329	HB 518
53-21-1303	enacted	Ch. 329	HB 518
53-21-1304	enacted	Ch. 329	HB 518
53-21-1305	enacted	Ch. 329	HB 518
53-21-1311	enacted	Ch. 329	HB 518
53-21-1312	enacted	Ch. 329	HB 518
53-21-1313	enacted	Ch. 329	HB 518
53-21-1314	enacted	Ch. 329	HB 518
53-21-1315	enacted	Ch. 329	HB 518
53-21-1321	enacted	Ch. 329	HB 518
53-21-1322	enacted	Ch. 329	HB 518
53-21-1323	enacted	Ch. 329	HB 518
53-21-1324	enacted	Ch. 329	HB 518
53-21-1325	enacted	Ch. 329	HB 518
53-21-1331	enacted	Ch. 329	HB 518

53-21-1332	enacted	Ch. 329	HB 518
53-21-1333	enacted	Ch. 329	HB 518
53-21-1334	enacted	Ch. 329	HB 518
53-21-1335	enacted	Ch. 329	HB 518
60-1-217	enacted	Ch. 105	HB 270
60-1-218	enacted	Ch. 219	SB 179
60-1-219	enacted	Ch. 222	SB 213
60-2-118	enacted	Ch. 132	HB 319
60-2-141	enacted	Ch. 180	HB 187
60-2-240	enacted	Ch. 166	HB 594
61-1-101	amended	Ch. 209	HB 213
	amended	Ch. 247	HB 277
	amended	Ch. 296	SB 81
61-2-302	amended	Ch. 149	HB 102
61-3-201	amended	Ch. 209	HB 213
61-3-205	amended	Ch. 74	HB 399
61-3-211	amended	Ch. 78	SB 211
61-3-301	amended	Ch. 209	HB 213
	amended	Ch. 231	HB 584
61-3-303	amended	Ch. 73	HB 367
61-3-312	amended	Ch. 73	HB 367
	amended	Ch. 209	HB 213
	amended	Ch. 247	HB 277
61-3-321	amended	Ch. 209	HB 213
	amended	Ch. 247	HB 277
	amended	Ch. 278	HB 618
	amended	Ch. 326	HB 370
61-3-332	amended (voided by sec. 2, Ch. 127)	Ch. 117	SB 49
	amended	Ch. 127	HB 171
	amended	Ch. 209	HB 213
	amended	Ch. 231	HB 584
	amended	Ch. 247	HB 277
61-4-129	amended	Ch. 129	HB 229
61-5-102	amended	Ch. 209	HB 213
61-5-105	amended	Ch. 207	HB 178
61-5-111	amended	Ch. 181	HB 195
61-5-112	amended	Ch. 296	SB 81
61-5-122	enacted	Ch. 209	HB 213
61-5-125	amended	Ch. 246	HB 216
61-5-141	enacted	Ch. 296	SB 81
61-5-146	formerly 61-5-220	Ch. 296	SB 81
61-5-147	formerly 61-5-221	Ch. 296	SB 81
61-5-205	amended	Ch. 149	HB 102
61-5-208	amended	Ch. 149	HB 102
	amended	Ch. 318	HB 106
61-5-220	renumbered 61-5-146	Ch. 296	SB 81
61-5-221	amended and renumbered 61-5-147	Ch. 296	SB 81
61-5-231	enacted	Ch. 149	HB 102
61-5-405	amended	Ch. 235	SB 68
61-6-105	amended	Ch. 73	HB 367
61-6-157	amended	Ch. 73	HB 367
61-6-158	amended	Ch. 209	HB 213
	amended	Ch. 247	HB 277
61-6-302	amended	Ch. 73	HB 367
61-7-101	amended	Ch. 235	SB 68
61-7-103	amended	Ch. 235	SB 68
61-7-104	repealed	Ch. 235	SB 68
61-7-105	amended	Ch. 235	SB 68
61-7-108	amended	Ch. 235	SB 68
61-7-118	amended	Ch. 235	SB 68
61-8-101	amended	Ch. 282	SB 15
61-8-102	amended	Ch. 296	SB 81
61-8-310	amended	Ch. 204	HB 61

MONTANA SESSION LAWS 2011

2012

61-8-339	amended	Ch. 104	HB 259
61-8-378	enacted	Ch. 209	HB 213
61-8-391	enacted	Ch. 247	HB 277
61-8-402	amended	Ch. 282	SB 15
	amended	Ch. 283	SB 42
61-8-404	amended	Ch. 282	SB 15
	amended	Ch. 283	SB 42
61-8-405	amended	Ch. 283	SB 42
61-8-409	amended	Ch. 282	SB 15
	amended	Ch. 283	SB 42
61-8-465	enacted	Ch. 282	SB 15
61-8-714	amended	Ch. 225	HB 12
	amended	Ch. 226	HB 69
	amended	Ch. 282	SB 15
61-8-722	amended	Ch. 225	HB 12
	amended	Ch. 226	HB 69
	amended	Ch. 282	SB 15
61-8-731	amended	Ch. 282	SB 15
61-8-734	amended	Ch. 149	HB 102
	amended	Ch. 282	SB 15
61-8-741	enacted	Ch. 226	HB 69
61-8-801	amended	Ch. 296	SB 81
61-8-803	amended	Ch. 296	SB 81
61-8-812	amended	Ch. 296	SB 81
61-8-903	amended	Ch. 136	HB 401
	amended	Ch. 143	HB 523
61-8-904	amended	Ch. 80	SB 258
	amended	Ch. 143	HB 523
61-8-908	amended	Ch. 143	HB 523
61-8-920	enacted	Ch. 143	HB 523
61-9-220	amended	Ch. 209	HB 213
61-9-416	amended	Ch. 80	SB 258
61-9-420	amended	Ch. 280	SB 319
61-9-423	amended	Ch. 280	SB 319
61-9-432	amended	Ch. 209	HB 213
61-10-102	amended	Ch. 210	HB 251
61-10-104	amended	Ch. 131	HB 298
61-10-124	amended	Ch. 34	HB 210
61-10-141	amended	Ch. 142	HB 517
61-10-214	amended	Ch. 278	HB 618
61-11-101	amended	Ch. 419	SB 423
61-11-102	amended	Ch. 296	SB 81
61-11-105	amended	Ch. 296	SB 81
61-11-203	amended	Ch. 19	SB 31
61-12-101	amended	Ch. 247	HB 277
61-12-314	amended	Ch. 103	HB 254
61-12-501	amended	Ch. 207	HB 178
61-12-502	amended	Ch. 207	HB 178
61-12-503	repealed	Ch. 207	HB 178
61-12-504	amended	Ch. 207	HB 178
61-13-103	amended	Ch. 280	SB 319
69-3-101	amended	Ch. 214	HB 380
69-3-111	amended	Ch. 19	SB 31
69-3-113	enacted	Ch. 321	HB 198
69-3-603	amended	Ch. 69	HB 233
69-3-604	amended	Ch. 60	HB 92
69-3-809	amended	Ch. 263	SB 246
69-3-2003	amended	Ch. 56	HB 78
69-3-2004	amended	Ch. 19	SB 31
69-3-2009	enacted	Ch. 115	SB 7
69-3-2010	enacted	Ch. 115	SB 7
69-5-102	amended	Ch. 120	SB 205
69-5-104	amended	Ch. 19	SB 31

69-5-121	enacted	Ch. 248	HB 291	
69-5-122	enacted	Ch. 248	HB 291	
69-5-104(1)	enacted	Ch. 120	SB 205	
69-8-411	amended	Ch. 120	SB 205	
69-12-101	amended	Ch. 218	SB 140	
69-12-102	amended	Ch. 218	SB 140	
69-12-203	amended	Ch. 4	HB 60	
69-12-328	enacted	Ch. 218	SB 140	
70-17-203	amended	Ch. 137	HB 403	
	amended	Ch. 249	HB 295	
	amended	Ch. 259	SB 146	
70-17-211	enacted	Ch. 259	SB 146	
70-17-212	enacted	Ch. 259	SB 146	
70-17-303	repealed	Ch. 249	HB 295	
70-17-401	enacted	Ch. 249	HB 295	
70-17-402	enacted	Ch. 249	HB 295	
70-17-403	enacted	Ch. 249	HB 295	
70-17-404	enacted	Ch. 249	HB 295	
70-17-405	enacted	Ch. 249	HB 295	
70-17-406	enacted	Ch. 249	HB 295	
70-17-407	enacted	Ch. 249	HB 295	
70-17-408	enacted	Ch. 249	HB 295	
70-23-102	amended	Ch. 373	HB 460	
70-23-103	amended	Ch. 373	HB 460	
70-23-301	amended	Ch. 373	HB 460	
70-27-111	amended	Ch. 19	SB 31	
72-1-206	amended	Ch. 238	SB 337	
72-1-310	enacted	Ch. 238	SB 337	
72-1-311	enacted	Ch. 238	SB 337	
72-1-312	enacted	Ch. 238	SB 337	
72-3-109	enacted	Ch. 238	SB 337	
72-3-401	amended	Ch. 238	SB 337	
72-3-916	amended	Ch. 19	SB 31	
72-3-917	amended	Ch. 109	HB 374	
72-5-402	amended	Ch. 329	HB 518	
72-5-501	amended	Ch. 109	HB 374	
72-5-502	amended	Ch. 109	HB 374	
72-6-121	amended	Ch. 76	SB 19	
72-31-201	repealed	Ch. 109	HB 374	
72-31-222	amended and renumbered	72-31-304	Ch. 109	HB 374
72-31-223	amended and renumbered	72-31-338	Ch. 109	HB 374
72-31-224	amended and renumbered	72-31-339	Ch. 109	HB 374
72-31-225	amended and renumbered	72-31-340	Ch. 109	HB 374
72-31-226	amended and renumbered	72-31-341	Ch. 109	HB 374
72-31-227	amended and renumbered	72-31-342	Ch. 109	HB 374
72-31-228	amended and renumbered	72-31-343	Ch. 109	HB 374
72-31-229	amended and renumbered	72-31-344	Ch. 109	HB 374
72-31-230	amended and renumbered	72-31-345	Ch. 109	HB 374
72-31-231	amended and renumbered	72-31-346	Ch. 109	HB 374
72-31-232	amended and renumbered	72-31-347	Ch. 109	HB 374
72-31-233	amended and renumbered	72-31-348	Ch. 109	HB 374
72-31-234	amended and renumbered	72-31-349	Ch. 109	HB 374
72-31-235	amended and renumbered	72-31-350	Ch. 109	HB 374
72-31-236	amended and renumbered	72-31-351	Ch. 109	HB 374
72-31-237	repealed	Ch. 109	HB 374	
72-31-238	amended and renumbered	72-31-365	Ch. 109	HB 374
72-31-301	enacted	Ch. 109	HB 374	
72-31-302	enacted	Ch. 109	HB 374	
72-31-303	enacted	Ch. 109	HB 374	
72-31-304	formerly 72-31-222	Ch. 109	HB 374	
72-31-305	enacted	Ch. 109	HB 374	
72-31-306	enacted	Ch. 109	HB 374	
72-31-307	enacted	Ch. 109	HB 374	

MONTANA SESSION LAWS 2011

2014

72-31-308	enacted	Ch. 109	HB 374
72-31-309	enacted	Ch. 109	HB 374
72-31-310	enacted	Ch. 109	HB 374
72-31-316	enacted	Ch. 109	HB 374
72-31-317	enacted	Ch. 109	HB 374
72-31-318	enacted	Ch. 109	HB 374
72-31-319	enacted	Ch. 109	HB 374
72-31-320	enacted	Ch. 109	HB 374
72-31-321	enacted	Ch. 109	HB 374
72-31-322	enacted	Ch. 109	HB 374
72-31-323	enacted	Ch. 109	HB 374
72-31-324	enacted	Ch. 109	HB 374
72-31-325	enacted	Ch. 109	HB 374
72-31-326	enacted	Ch. 109	HB 374
72-31-327	enacted	Ch. 109	HB 374
72-31-328	enacted	Ch. 109	HB 374
72-31-336	enacted	Ch. 109	HB 374
72-31-337	enacted	Ch. 109	HB 374
72-31-338	formerly 72-31-223	Ch. 109	HB 374
72-31-339	formerly 72-31-224	Ch. 109	HB 374
72-31-340	formerly 72-31-225	Ch. 109	HB 374
72-31-341	formerly 72-31-226	Ch. 109	HB 374
72-31-342	formerly 72-31-227	Ch. 109	HB 374
72-31-343	formerly 72-31-228	Ch. 109	HB 374
72-31-344	formerly 72-31-229	Ch. 109	HB 374
72-31-345	formerly 72-31-230	Ch. 109	HB 374
72-31-346	formerly 72-31-231	Ch. 109	HB 374
72-31-347	formerly 72-31-232	Ch. 109	HB 374
72-31-348	formerly 72-31-233	Ch. 109	HB 374
72-31-349	formerly 72-31-234	Ch. 109	HB 374
72-31-350	formerly 72-31-235	Ch. 109	HB 374
72-31-351	formerly 72-31-236	Ch. 109	HB 374
72-31-352	enacted	Ch. 109	HB 374
72-31-353	enacted	Ch. 109	HB 374
72-31-354	enacted	Ch. 109	HB 374
72-31-365	formerly 72-31-238	Ch. 109	HB 374
72-31-366	enacted	Ch. 109	HB 374
72-31-367	enacted	Ch. 109	HB 374
72-34-441	amended	Ch. 285	SB 333
72-34-452	amended	Ch. 285	SB 333
75-1-102	amended	Ch. 396	SB 233
75-1-201	amended	Ch. 396	SB 233
75-1-203	amended	Ch. 396	SB 233
75-1-207	amended	Ch. 19	SB 31
75-1-208	amended	Ch. 396	SB 233
75-1-220	amended	Ch. 396	SB 233
75-2-111	amended	Ch. 94	SB 47
75-5-103	amended	Ch. 267	SB 367
	amended	Ch. 398	SB 292
75-5-105	amended	Ch. 267	SB 367
75-5-313	amended	Ch. 267	SB 367
75-5-314	enacted	Ch. 267	SB 367
75-5-703	amended	Ch. 302	SB 267
75-5-1107	amended	Ch. 297	SB 87
75-6-102	amended	Ch. 85	HB 52
75-6-103	amended	Ch. 85	HB 52
75-6-107	amended	Ch. 213	HB 352
75-6-212	amended	Ch. 297	SB 87
75-6-305	amended	Ch. 13	HB 101
75-7-123	amended	Ch. 284	SB 238
75-10-112	amended	Ch. 196	SB 236
75-10-532	amended	Ch. 312	HB 604
75-10-722	amended	Ch. 257	SB 30

75-10-743	amended	Ch. 312	HB 604
75-11-307	amended	Ch. 189	SB 9
75-11-309	amended	Ch. 189	SB 9
75-11-503	amended	Ch. 189	SB 9
75-11-505	amended	Ch. 189	SB 9
75-11-508	enacted	Ch. 189	SB 9
75-11-521	enacted	Ch. 394	HB 613
75-15-103	amended	Ch. 19	SB 31
75-20-102	amended	Ch. 224	SB 320
75-20-104	amended	Ch. 19	SB 31
	amended	Ch. 224	SB 320
	amended	Ch. 309	SB 172
	amended	Ch. 382	SB 206
75-20-113	enacted	Ch. 321	HB 198
75-20-201	amended	Ch. 309	SB 172
75-20-301	amended	Ch. 382	SB 206
75-20-303	amended	Ch. 382	SB 206
76-2-303	amended	Ch. 19	SB 31
76-2-305	amended	Ch. 88	HB 181
76-3-103	amended	Ch. 214	HB 380
76-3-203	amended	Ch. 373	HB 460
76-3-509	amended	Ch. 137	HB 403
76-3-608	amended	Ch. 409	SB 298
76-3-610	amended	Ch. 252	HB 522
76-4-104	amended	Ch. 83	HB 28
	amended	Ch. 217	SB 89
76-4-125	amended	Ch. 217	SB 89
76-5-206	repealed	Ch. 23	HB 76
76-5-207	repealed	Ch. 23	HB 76
76-5-208	amended	Ch. 23	HB 76
76-5-405	amended	Ch. 23	HB 76
76-13-150	amended	Ch. 312	HB 604
76-13-410	amended	Ch. 61	HB 93
76-13-416	enacted	Ch. 61	HB 93
76-15-301	amended	Ch. 162	HB 430
76-15-311	amended	Ch. 162	HB 430
76-15-312	amended	Ch. 162	HB 430
76-15-904	amended	Ch. 312	HB 604
77-1-101	amended	Ch. 93	SB 38
77-1-102	amended	Ch. 371	HB 165
77-1-103	amended	Ch. 371	HB 165
77-1-117	amended	Ch. 413	SB 100
77-1-121	amended	Ch. 359	SB 35
77-1-130	amended	Ch. 325	HB 297
77-1-134	amended	Ch. 359	SB 35
77-1-208	amended	Ch. 401	SB 409
77-1-220	amended	Ch. 362	SB 410
77-1-228	enacted	Ch. 362	SB 410
77-1-229	enacted	Ch. 362	SB 410
77-1-235	enacted	Ch. 401	SB 409
77-1-236	enacted	Ch. 401	SB 409
77-1-804	amended	Ch. 62	HB 98
77-1-1109	enacted	Ch. 359	SB 035
77-1-1110	enacted	Ch. 359	SB 035
77-1-1111	enacted	Ch. 359	SB 035
77-1-1112	enacted	Ch. 359	SB 035
77-1-1113	enacted	Ch. 359	SB 035
77-1-1114	enacted	Ch. 359	SB 035
77-1-1115	enacted	Ch. 359	SB 035
77-1-1116	enacted	Ch. 359	SB 035
77-1-1117	enacted	Ch. 359	SB 035
77-2-101	amended	Ch. 359	SB 35
77-2-103	amended	Ch. 141	HB 481

MONTANA SESSION LAWS 2011

2016

77-2-318	amended	Ch. 401	SB 409
77-2-319	repealed	Ch. 401	SB 409
77-2-351	amended	Ch. 141	HB 481
77-3-305	amended	Ch. 332	HB 533
77-3-312	amended	Ch. 332	HB 533
77-3-313	amended	Ch. 332	HB 533
77-3-314	amended	Ch. 332	HB 533
77-3-316	amended	Ch. 332	HB 533
77-3-322	enacted	Ch. 243	HB 107
77-3-323	enacted	Ch. 243	HB 107
77-4-208	amended	Ch. 371	HB 165
80-4-402	amended	Ch. 175	SB 74
80-4-405	amended	Ch. 175	SB 74
80-4-421	amended	Ch. 175	SB 74
80-4-502	amended	Ch. 175	SB 74
80-4-505	amended	Ch. 175	SB 74
80-4-506	amended	Ch. 175	SB 74
80-4-601	amended	Ch. 175	SB 74
80-4-604	amended	Ch. 175	SB 74
80-5-126	amended	Ch. 300	SB 195
80-5-128	amended	Ch. 300	SB 195
80-5-139	amended	Ch. 300	SB 195
80-5-601	enacted	Ch. 260	SB 218
80-5-602	enacted	Ch. 260	SB 218
80-5-603	enacted	Ch. 260	SB 218
80-5-604	enacted	Ch. 260	SB 218
80-5-605	enacted	Ch. 260	SB 218
80-5-606	enacted	Ch. 260	SB 218
80-7-106	amended	Ch. 341	SB 126
80-7-108	amended	Ch. 341	SB 126
80-7-404	amended	Ch. 303	SB 296
80-7-814	amended (voided by sec. 12, Ch. 244)	Ch. 128	HB 212
	amended	Ch. 244	HB 166
80-7-1002	amended	Ch. 378	HB 621
80-7-1003	amended	Ch. 378	HB 621
80-7-1005	amended	Ch. 378	HB 621
80-7-1006	amended	Ch. 378	HB 621
80-7-1007	amended	Ch. 378	HB 621
80-7-1008	amended	Ch. 378	HB 621
80-7-1011	amended	Ch. 378	HB 621
81-1-101	amended	Ch. 403	SB 207
81-1-102	amended	Ch. 417	SB 277
81-1-110	amended	Ch. 229	HB 469
	amended	Ch. 339	HB 622
81-1-112	enacted	Ch. 339	HB 622
81-2-102	amended	Ch. 5	HB 54
81-2-115	enacted	Ch. 16	HB 294
81-2-120	amended	Ch. 403	SB 207
81-2-121	amended	Ch. 258	SB 124
	amended	Ch. 403	SB 207
81-3-201	amended	Ch. 403	SB 207
81-4-603	amended	Ch. 403	SB 207
81-5-101	amended	Ch. 403	SB 207
81-5-104	amended	Ch. 403	SB 207
81-5-121	enacted	Ch. 403	SB 207
81-7-103	amended	Ch. 339	HB 622
81-7-104	amended	Ch. 339	HB 622
81-7-106	enacted	Ch. 339	HB 622
81-8-901	amended	Ch. 417	SB 277
81-8-902	amended	Ch. 417	SB 277
82-4-203	amended	Ch. 398	SB 292
	amended	Ch. 408	SB 297
82-4-207	enacted	Ch. 398	SB 292

82-4-226	amended	Ch. 407	SB 286
82-4-235	amended	Ch. 84	HB 37
82-4-303	amended	Ch. 410	SB 312
82-4-305	amended	Ch. 410	SB 312
82-4-335	amended	Ch. 145	HB 422
	amended	Ch. 410	SB 312
82-4-337	amended	Ch. 410	SB 312
82-4-342	amended	Ch. 410	SB 312
82-4-353	amended	Ch. 410	SB 312
82-11-111	amended	Ch. 19	SB 31
82-11-135	amended	Ch. 312	HB 604
82-11-138	enacted	Ch. 184	HB 479
82-11-183	amended	Ch. 264	SB 285
85-1-211	amended	Ch. 144	HB 568
85-1-501	amended	Ch. 275	SB 327
85-2-102	amended	Ch. 29	HB 24
85-2-125	amended	Ch. 360	SB 36
85-2-301	amended	Ch. 112	HB 497
85-2-306	amended	Ch. 96	SB 103
	amended	Ch. 97	SB 128
85-2-310	amended	Ch. 29	HB 24
85-2-402	amended	Ch. 29	HB 24
85-2-420	enacted	Ch. 29	HB 24
85-2-436	amended	Ch. 19	SB 31
85-7-1436	amended	Ch. 253	HB 538
85-7-1437	amended	Ch. 253	HB 538
85-7-2013	amended	Ch. 164	HB 498
85-7-2014	amended	Ch. 164	HB 498
85-7-2016	amended	Ch. 164	HB 498
85-7-2022	amended	Ch. 253	HB 538
85-7-2023	amended	Ch. 253	HB 538
85-7-2032	amended	Ch. 164	HB 498
85-7-2033	amended	Ch. 253	HB 538
85-8-503	amended	Ch. 253	HB 538
85-9-625	amended	Ch. 253	HB 538
85-20-1007	amended	Ch. 47	HB 58
85-20-1504	amended	Ch. 57	HB 79
85-20-1505	amended	Ch. 147	HB 49
85-20-1511	enacted	Ch. 147	HB 49
87-1-102	repealed	Ch. 258	SB 124
87-1-108	repealed	Ch. 258	SB 124
87-1-109	repealed	Ch. 258	SB 124
87-1-110	repealed	Ch. 258	SB 124
87-1-111	amended (voided by sec. 129, Ch. 258)	Ch. 250	HB 336
	repealed	Ch. 258	SB 124
87-1-112	repealed	Ch. 258	SB 124
87-1-113	repealed	Ch. 258	SB 124
87-1-114	repealed	Ch. 258	SB 124
87-1-115	amended (voided by sec. 130, Ch. 258)	Ch. 250	HB 336
	repealed	Ch. 258	SB 124
87-1-120	amended	Ch. 258	SB 124
87-1-121	repealed	Ch. 258	SB 124
87-1-125	repealed	Ch. 258	SB 124
87-1-201	amended	Ch. 370	HB 159
	amended	Ch. 395	HB 619
87-1-208	repealed	Ch. 258	SB 124
87-1-214	enacted	Ch. 178	SB 115
87-1-216	amended	Ch. 383	SB 212
	amended	Ch. 403	SB 207
87-1-217	amended	Ch. 71	HB 287
	amended	Ch. 414	SB 108
87-1-231	repealed	Ch. 258	SB 124
87-1-232	amended	Ch. 258	SB 124

MONTANA SESSION LAWS 2011

2018

87-1-234	amended	Ch. 258	SB 124
87-1-271	amended	Ch. 298	SB 99
87-1-290	amended	Ch. 415	SB 136
87-1-301	amended	Ch. 174	HB 566
	amended	Ch. 254	HB 541
	amended	Ch. 370	HB 159
	amended	Ch. 391	HB 372
87-1-303	amended	Ch. 254	HB 541
	amended	Ch. 370	HB 159
87-1-304	amended	Ch. 221	SB 184
	amended	Ch. 292	HB 172
	amended	Ch. 370	HB 159
87-1-513	amended	Ch. 134	HB 337
87-1-601	amended	Ch. 62	HB 98
	amended	Ch. 258	SB 124
	amended	Ch. 390	HB 363
87-1-621	amended	Ch. 395	HB 619
87-1-622	enacted	Ch. 395	HB 619
87-1-623	enacted	Ch. 390	HB 363
87-1-625	enacted	Ch. 400	SB 348
87-1-803	amended	Ch. 258	SB 124
87-1-804	amended	Ch. 258	SB 124
87-2-101	amended	Ch. 19	SB 31
	amended (voided by sec. 122, Ch. 258)	Ch. 134	HB 337
	amended	Ch. 258	SB 124
87-2-103	repealed	Ch. 258	SB 124
	amended (voided by sec. 2, Ch. 316)	Ch. 316	HB 47
87-2-104	amended	Ch. 258	SB 124
87-2-106	amended	Ch. 258	SB 124
87-2-109	repealed	Ch. 258	SB 124
87-2-110	repealed	Ch. 258	SB 124
87-2-112	repealed	Ch. 258	SB 124
87-2-114	amended	Ch. 134	HB 337
	repealed	Ch. 258	SB 124
87-2-115	enacted	Ch. 391	HB 372
87-2-120	repealed	Ch. 258	SB 124
87-2-202	amended	Ch. 258	SB 124
87-2-203	repealed	Ch. 258	SB 124
87-2-205	repealed	Ch. 258	SB 124
87-2-311	enacted	Ch. 316	HB 47
87-2-411	amended	Ch. 258	SB 124
87-2-509	repealed	Ch. 258	SB 124
87-2-511	amended	Ch. 336	HB 607
87-2-514	amended	Ch. 415	SB 136
87-2-515	amended	Ch. 415	SB 136
87-2-521	amended	Ch. 258	SB 124
87-2-522	amended	Ch. 183	HB 339
87-2-523	amended	Ch. 390	HB 363
87-2-524	amended	Ch. 390	HB 363
87-2-604	repealed	Ch. 258	SB 124
87-2-701	amended	Ch. 292	HB 172
87-2-706	amended	Ch. 68	HB 176
87-2-730	amended	Ch. 221	SB 184
87-2-731	amended	Ch. 221	SB 184
87-2-804	repealed	Ch. 258	SB 124
87-2-807	amended (voided by sec. 122, Ch. 258)	Ch. 134	HB 337
	amended	Ch. 258	SB 124
87-2-903	amended	Ch. 298	SB 99
87-3-101	repealed	Ch. 258	SB 124
87-3-102	amended (voided by sec. 124, Ch. 258)	Ch. 250	HB 336
	repealed	Ch. 258	SB 124
87-3-103	repealed	Ch. 258	SB 124
87-3-104	repealed	Ch. 258	SB 124

87-3-105	repealed	Ch. 258	SB 124
87-3-107	repealed	Ch. 258	SB 124
87-3-108	repealed	Ch. 258	SB 124
87-3-109	repealed	Ch. 258	SB 124
87-3-110	repealed	Ch. 113	HB 536
	amended	Ch. 258	SB 124
87-3-111	amended (voided by sec. 123, Ch. 258)	Ch. 113	HB 536
	repealed	Ch. 258	SB 124
87-3-112	repealed	Ch. 258	SB 124
87-3-116	repealed	Ch. 258	SB 124
87-3-117	repealed	Ch. 258	SB 124
87-3-118	amended (voided by sec. 125, Ch. 258)	Ch. 113	HB 536
	repealed	Ch. 258	SB 124
87-3-121	amended	Ch. 258	SB 124
87-3-123	repealed	Ch. 258	SB 124
87-3-124	repealed	Ch. 258	SB 124
	amended (voided by sec. 127, Ch. 258)	Ch. 272	SB 135
87-3-125	repealed	Ch. 258	SB 124
87-3-126	amended	Ch. 258	SB 124
87-3-130	repealed	Ch. 258	SB 124
87-3-134	repealed	Ch. 258	SB 124
87-3-135	repealed	Ch. 258	SB 124
87-3-141	repealed	Ch. 258	SB 124
87-3-142	repealed	Ch. 258	SB 124
87-3-143	repealed	Ch. 258	SB 124
87-3-144	repealed	Ch. 258	SB 124
87-3-204	amended	Ch. 258	SB 124
87-3-205	repealed	Ch. 258	SB 124
87-3-206	repealed	Ch. 258	SB 124
87-3-207	repealed	Ch. 258	SB 124
87-3-209	repealed	Ch. 258	SB 124
87-3-221	amended	Ch. 258	SB 124
87-3-222	amended	Ch. 258	SB 124
87-3-224	amended	Ch. 258	SB 124
87-3-236	amended	Ch. 19	SB 31
87-3-301	repealed	Ch. 258	SB 124
	amended	Ch. 370	HB 159
87-3-302	repealed	Ch. 258	SB 124
87-3-304	repealed	Ch. 258	SB 124
87-3-305	repealed	Ch. 258	SB 124
87-3-306	repealed	Ch. 258	SB 124
87-3-307	repealed	Ch. 258	SB 124
87-3-401	repealed	Ch. 258	SB 124
87-3-402	repealed	Ch. 258	SB 124
87-3-403	amended	Ch. 258	SB 124
87-3-404	repealed	Ch. 258	SB 124
87-3-405	repealed	Ch. 258	SB 124
87-3-501	repealed	Ch. 258	SB 124
87-3-503	repealed	Ch. 258	SB 124
87-3-504	repealed	Ch. 258	SB 124
87-3-505	repealed	Ch. 258	SB 124
87-3-506	amended (voided by sec. 128, Ch. 258)	Ch. 250	HB 336
	repealed	Ch. 258	SB 124
87-3-507	repealed	Ch. 258	SB 124
87-4-201	amended	Ch. 258	SB 124
87-4-306	amended	Ch. 258	SB 124
87-4-407	amended	Ch. 258	SB 124
87-4-427	amended	Ch. 258	SB 124
87-4-529	enacted	Ch. 258	SB 124
87-4-601	amended	Ch. 258	SB 124
87-4-608	repealed	Ch. 258	SB 124
87-4-609	amended	Ch. 258	SB 124
87-4-803	amended	Ch. 258	SB 124

MONTANA SESSION LAWS 2011

2020

87-4-807	amended	Ch. 258	SB 124
87-4-903	amended	Ch. 258	SB 124
87-4-915	amended	Ch. 258	SB 124
87-4-1002	amended	Ch. 258	SB 124
87-4-1014	repealed	Ch. 258	SB 124
87-5-132	amended	Ch. 390	HB 363
	amended	Ch. 400	SB 348
87-5-204	amended	Ch. 258	SB 124
87-5-208	amended	Ch. 118	SB 92
87-5-301	amended	Ch. 292	HB 172
	amended	Ch. 416	SB 143
87-5-302	amended	Ch. 292	HB 172
87-5-703	amended	Ch. 258	SB 124
87-5-714	amended	Ch. 19	SB 31
87-5-721	amended	Ch. 139	HB 449
	amended	Ch. 258	SB 124
87-6-101	enacted and amended	Ch. 258	SB 124
87-6-102	enacted	Ch. 258	SB 124
87-6-103	enacted	Ch. 258	SB 124
87-6-104	enacted	Ch. 258	SB 124
87-6-105	enacted	Ch. 258	SB 124
87-6-106	enacted	Ch. 258	SB 124
87-6-201	enacted	Ch. 258	SB 124
87-6-202	enacted and amended	Ch. 258	SB 124
87-6-203	enacted	Ch. 258	SB 124
87-6-204	enacted	Ch. 258	SB 124
87-6-205	enacted and amended	Ch. 258	SB 124
87-6-206	enacted and amended	Ch. 258	SB 124
87-6-207	enacted	Ch. 258	SB 124
87-6-214	enacted	Ch. 258	SB 124
87-6-215	enacted	Ch. 258	SB 124
87-6-216	enacted	Ch. 258	SB 124
87-6-217	enacted	Ch. 258	SB 124
87-6-218	enacted	Ch. 258	SB 124
87-6-219	enacted	Ch. 258	SB 124
87-6-220	enacted	Ch. 258	SB 124
87-6-301	enacted and amended	Ch. 258	SB 124
	amended	Ch. 316	HB 47
87-6-302	enacted	Ch. 258	SB 124
87-6-303	enacted	Ch. 258	SB 124
87-6-304	enacted	Ch. 258	SB 124
87-6-305	enacted	Ch. 258	SB 124
87-6-306	enacted	Ch. 258	SB 124
87-6-310	enacted	Ch. 258	SB 124
87-6-311	enacted	Ch. 258	SB 124
87-6-312	enacted	Ch. 258	SB 124
87-6-313	enacted	Ch. 258	SB 124
87-6-314	enacted	Ch. 258	SB 124
87-6-401	enacted	Ch. 258	SB 124
87-6-402	enacted	Ch. 258	SB 124
87-6-403	enacted	Ch. 258	SB 124
87-6-404	enacted and amended	Ch. 258	SB 124
87-6-405	enacted	Ch. 258	SB 124
87-6-406	enacted	Ch. 258	SB 124
87-6-410	enacted	Ch. 258	SB 124
87-6-411	enacted	Ch. 258	SB 124
87-6-412	enacted	Ch. 258	SB 124
87-6-413	enacted	Ch. 258	SB 124
87-6-414	enacted	Ch. 258	SB 124
87-6-415	enacted	Ch. 258	SB 124
87-6-501	enacted	Ch. 258	SB 124
87-6-601	enacted	Ch. 258	SB 124
87-6-602	enacted	Ch. 258	SB 124

87-6-603	enacted and amended	Ch. 258	SB 124
87-6-701	enacted	Ch. 258	SB 124
87-6-702	enacted	Ch. 258	SB 124
87-6-703	enacted	Ch. 258	SB 124
87-6-704	enacted	Ch. 258	SB 124
87-6-705	enacted	Ch. 258	SB 124
87-6-706	enacted	Ch. 258	SB 124
87-6-707	enacted	Ch. 258	SB 124
87-6-713	enacted	Ch. 258	SB 124
87-6-714	enacted	Ch. 258	SB 124
87-6-715	enacted	Ch. 258	SB 124
87-6-716	enacted	Ch. 258	SB 124
87-6-717	enacted	Ch. 258	SB 124
87-6-718	enacted	Ch. 258	SB 124
87-6-801	enacted	Ch. 258	SB 124
87-6-901	enacted	Ch. 258	SB 124
87-6-902	enacted	Ch. 258	SB 124
87-6-903	enacted	Ch. 258	SB 124
87-6-904	enacted	Ch. 258	SB 124
87-6-905	enacted	Ch. 258	SB 124
87-6-906	enacted and amended	Ch. 258	SB 124
87-6-907	enacted and amended	Ch. 258	SB 124
87-6-908	enacted	Ch. 258	SB 124
87-6-914	enacted	Ch. 258	SB 124
87-6-915	enacted	Ch. 258	SB 124
87-6-916	enacted	Ch. 258	SB 124
87-6-917	enacted	Ch. 258	SB 124
87-6-918	enacted	Ch. 258	SB 124
87-6-919	enacted	Ch. 258	SB 124
87-6-920	enacted	Ch. 258	SB 124
87-6-921	enacted	Ch. 258	SB 124
87-6-922	enacted	Ch. 258	SB 124
87-6-923	enacted	Ch. 258	SB 124
90-1-181	enacted	Ch. 245	HB 196
90-1-182	enacted	Ch. 245	HB 196
90-3-1003	amended	Ch. 337	HB 611
90-3-1301	amended	Ch. 19	SB 31
90-4-605	amended	Ch. 240	HB 51
90-4-612	amended	Ch. 240	HB 51
90-4-614	amended	Ch. 240	HB 51
90-4-625	enacted	Ch. 240	HB 51
90-4-1001	amended	Ch. 385	SB 305
90-4-1003	amended	Ch. 43	SB 65
90-6-601	enacted	Ch. 349	SB 326
90-6-602	enacted	Ch. 349	SB 326
90-6-603	enacted	Ch. 349	SB 326
90-6-604	enacted	Ch. 349	SB 326
90-6-605	enacted	Ch. 349	SB 326
90-6-703	amended	Ch. 389	HB 351
90-6-710	amended	Ch. 389	HB 351
90-6-1001	amended	Ch. 128	HB 212
90-8-101	repealed	Ch. 9	HB 44
90-8-102	repealed	Ch. 9	HB 44
90-8-103	repealed	Ch. 9	HB 44
90-8-104	repealed	Ch. 9	HB 44
90-8-105	repealed	Ch. 9	HB 44
90-8-106	repealed	Ch. 9	HB 44
90-8-201	repealed	Ch. 9	HB 44
90-8-202	repealed	Ch. 9	HB 44
90-8-203	repealed	Ch. 9	HB 44
90-8-204	repealed	Ch. 9	HB 44
90-8-205	repealed	Ch. 9	HB 44
90-8-301	repealed	Ch. 9	HB 44

MONTANA SESSION LAWS 2011

2022

90-8-302	repealed	Ch. 9	HB 44
90-8-303	repealed	Ch. 9	HB 44
90-8-304	repealed	Ch. 9	HB 44
90-8-305	repealed	Ch. 9	HB 44
90-8-311	repealed	Ch. 9	HB 44
90-8-312	repealed	Ch. 9	HB 44
90-8-313	repealed	Ch. 9	HB 44
90-8-321	repealed	Ch. 9	HB 44

SESSION LAWS AFFECTED

<u>Laws Affected</u>	<u>Action</u>	<u>Chapter</u>	<u>Bill Number</u>
<u>Laws of 1997</u>			
Ch. 461, sec. 5	amended	325	HB 297
<u>Laws of 1999</u>			
Ch. 495, sec. 6	amended	389	HB 351
<u>Laws of 2001</u>			
Ch. 70, sec. 1	amended	389	HB 351
Ch. 70, sec. 2	repealed	389	HB 351
Ch. 270, sec. 6	amended	325	HB 297
<u>Laws of 2005</u>			
Ch. 57, sec. 2, 3, 4	amended	325	HB 297
<u>Special Laws of May 2007</u>			
Ch. 3, sec. 14, 16	amended	368	HB 10
Ch. 3, sec. 2	amended	387	HB 5
<u>Laws of 2009</u>			
Ch. 72, sec. 2	repealed	84	HB 37
Ch. 330, sec. 8	amended	19	SB 31
Ch. 361, sec. 20	repealed	188	SB 5
Ch. 435, sec. 2	amended	368	HB 10
Ch. 437, sec. 12	repealed	323	HB 262
Ch. 478, sec. 2, 6	amended	387	HB 5
Ch. 486, sec. 32	amended	371	HB 165

SENATE BILL TO CHAPTER NUMBER

<u>Bill No.</u>	<u>Chapter No.</u>	<u>Bill No.</u>	<u>Chapter No.</u>	<u>Bill No.</u>	<u>Chapter No.</u>
SB 1	293	SB 108	414	SB 256	79
SB 3	187	SB 115	178	SB 258	80
SB 5	188	SB 118	179	SB 265	405
SB 7	115	SB 120	236	SB 266	406
SB 9	189	SB 124	258	SB 267	302
SB 11	340	SB 125	402	SB 268	203
SB 12	116	SB 126	341	SB 275	198
SB 15	282	SB 128	97	SB 277	417
SB 16	294	SB 132	342	SB 278	237
SB 19	76	SB 135	272	SB 279	384
SB 21	17	SB 136	415	SB 280	199
SB 26	37	SB 138	273	SB 283	347
SB 27	18	SB 140	218	SB 285	264
SB 28	232	SB 143	416	SB 286	407
SB 29	412	SB 146	259	SB 287	200
SB 30	257	SB 149	274	SB 288	265
SB 31	19	SB 152	46	SB 289	81
SB 32	91	SB 153	343	SB 290	201
SB 34	92	SB 156	361	SB 292	398
SB 35	359	SB 160	191	SB 294	348
SB 36	360	SB 165	51	SB 295	399
SB 38	93	SB 166	381	SB 296	303
SB 41	38	SB 172	309	SB 297	408
SB 42	283	SB 173	299	SB 298	409
SB 43	233	SB 179	219	SB 304	223
SB 46	39	SB 180	220	SB 305	385
SB 47	94	SB 184	221	SB 311	304
SB 49	117	SB 186	52	SB 312	410
SB 51	40	SB 187	344	SB 319	280
SB 52	234	SB 189	119	SB 320	224
SB 53	41	SB 194	192	SB 326	349
SB 55	190	SB 195	300	SB 327	275
SB 59	279	SB 203	77	SB 329	418
SB 60	42	SB 205	120	SB 331	350
SB 62	20	SB 206	382	SB 333	285
SB 63	26	SB 207	403	SB 335	82
SB 64	49	SB 208	193	SB 337	238
SB 65	43	SB 210	194	SB 338	386
SB 67	95	SB 211	78	SB 340	305
SB 68	235	SB 212	383	SB 342	98
SB 69	50	SB 213	222	SB 347	286
SB 72	21	SB 215	345	SB 348	400
SB 73	44	SB 218	260	SB 351	351
SB 74	175	SB 219	261	SB 352	239
SB 75	295	SB 221	346	SB 354	352
SB 76	176	SB 222	169	SB 355	202
SB 78	27	SB 223	195	SB 357	266
SB 81	296	SB 229	404	SB 361	121
SB 87	297	SB 233	396	SB 367	267
SB 89	217	SB 234	301	SB 372	411
SB 91	177	SB 236	196	SB 374	268
SB 92	118	SB 238	284	SB 376	306
SB 95	45	SB 241	397	SB 382	276
SB 99	298	SB 242	262	SB 385	287
SB 100	413	SB 246	263	SB 389	277
SB 103	96	SB 248	197	SB 409	401

MONTANA SESSION LAWS 2011

2024

SB 410	362	SB 417	354	SB 426	311
SB 411	353	SB 418	310	SB 429	355
SB 412	288	SB 420	289		
SB 413	269	SB 423	419		

HOUSE BILL TO CHAPTER NUMBER

<u>Bill No.</u>	<u>Chapter No.</u>	<u>Bill No.</u>	<u>Chapter No.</u>	<u>Bill No.</u>	<u>Chapter No.</u>
HB 1	1	HB 82	124	HB 182	25
HB 2	363	HB 83	241	HB 185	156
HB 3	281	HB 84	12	HB 187	180
HB 4	364	HB 86	59	HB 188	270
HB 5	387	HB 89	6	HB 191	208
HB 6	365	HB 90	317	HB 195	181
HB 7	388	HB 91	242	HB 196	245
HB 8	366	HB 92	60	HB 198	321
HB 9	367	HB 93	61	HB 204	14
HB 10	368	HB 94	100	HB 208	15
HB 12	225	HB 95	205	HB 210	34
HB 15	313	HB 96	31	HB 212	128
HB 17	28	HB 97	24	HB 213	209
HB 19	7	HB 98	62	HB 216	246
HB 21	3	HB 99	101	HB 225	157
HB 22	2	HB 101	13	HB 229	129
HB 23	53	HB 102	149	HB 233	69
HB 24	29	HB 103	206	HB 249	322
HB 25	122	HB 106	318	HB 250	130
HB 28	83	HB 107	243	HB 251	210
HB 29	314	HB 110	150	HB 252	70
HB 37	84	HB 111	319	HB 254	103
HB 38	8	HB 114	32	HB 255	89
HB 39	22	HB 116	151	HB 256	158
HB 41	146	HB 117	125	HB 258	357
HB 43	315	HB 118	63	HB 259	104
HB 44	9	HB 119	64	HB 262	323
HB 47	316	HB 120	65	HB 263	35
HB 49	147	HB 122	369	HB 265	290
HB 51	240	HB 123	152	HB 268	48
HB 52	85	HB 125	227	HB 269	159
HB 53	54	HB 126	87	HB 270	105
HB 54	5	HB 127	66	HB 273	106
HB 57	10	HB 131	153	HB 277	247
HB 58	47	HB 132	356	HB 279	228
HB 60	4	HB 133	320	HB 287	71
HB 61	204	HB 134	154	HB 288	211
HB 62	55	HB 135	155	HB 291	248
HB 63	86	HB 141	102	HB 293	107
HB 65	30	HB 142	126	HB 294	16
HB 66	170	HB 156	33	HB 295	249
HB 69	226	HB 159	370	HB 296	324
HB 70	99	HB 165	371	HB 297	325
HB 74	11	HB 166	244	HB 298	131
HB 76	23	HB 169	67	HB 300	212
HB 77	148	HB 171	127	HB 310	372
HB 78	56	HB 172	292	HB 315	160
HB 79	57	HB 176	68	HB 319	132
HB 80	123	HB 178	207	HB 324	133
HB 81	58	HB 181	88	HB 327	271

CHAPTER NUMBER TO BILL NUMBER

HB 330	182	HB 432	138	HB 547	173
HB 334	167	HB 449	139	HB 548	230
HB 336	250	HB 458	328	HB 552	255
HB 337	134	HB 460	373	HB 559	334
HB 338	135	HB 467	140	HB 560	374
HB 339	183	HB 469	229	HB 561	375
HB 348	108	HB 477	358	HB 562	376
HB 351	389	HB 479	184	HB 565	377
HB 352	213	HB 480	172	HB 566	174
HB 356	72	HB 481	141	HB 568	144
HB 359	36	HB 484	111	HB 573	114
HB 363	390	HB 487	163	HB 575	186
HB 367	73	HB 491	185	HB 584	231
HB 370	326	HB 495	393	HB 587	335
HB 372	391	HB 497	112	HB 594	166
HB 374	109	HB 498	164	HB 602	256
HB 377	392	HB 508	168	HB 604	312
HB 380	214	HB 517	142	HB 607	336
HB 391	161	HB 518	329	HB 611	337
HB 399	74	HB 522	252	HB 613	394
HB 401	136	HB 523	143	HB 615	338
HB 403	137	HB 525	330	HB 618	278
HB 409	327	HB 528	165	HB 619	395
HB 411	251	HB 529	215	HB 621	378
HB 416	291	HB 530	331	HB 622	339
HB 419	75	HB 533	332	HB 627	307
HB 421	171	HB 535	216	HB 638	308
HB 422	145	HB 536	113	HB 641	379
HB 426	90	HB 538	253	HB 642	380
HB 428	110	HB 541	254		
HB 430	162	HB 543	333		

CHAPTER NUMBER TO BILL NUMBER

Chapter No.	Bill No.	Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 1	HB 1	Ch. 24	HB 97	Ch. 47	HB 58
Ch. 2	HB 22	Ch. 25	HB 182	Ch. 48	HB 268
Ch. 3	HB 21	Ch. 26	SB 63	Ch. 49	SB 64
Ch. 4	HB 60	Ch. 27	SB 78	Ch. 50	SB 69
Ch. 5	HB 54	Ch. 28	HB 17	Ch. 51	SB 165
Ch. 6	HB 89	Ch. 29	HB 24	Ch. 52	SB 186
Ch. 7	HB 19	Ch. 30	HB 65	Ch. 53	HB 23
Ch. 8	HB 38	Ch. 31	HB 96	Ch. 54	HB 53
Ch. 9	HB 44	Ch. 32	HB 114	Ch. 55	HB 62
Ch. 10	HB 57	Ch. 33	HB 156	Ch. 56	HB 78
Ch. 11	HB 74	Ch. 34	HB 210	Ch. 57	HB 79
Ch. 12	HB 84	Ch. 35	HB 263	Ch. 58	HB 81
Ch. 13	HB 101	Ch. 36	HB 359	Ch. 59	HB 86
Ch. 14	HB 204	Ch. 37	SB 26	Ch. 60	HB 92
Ch. 15	HB 208	Ch. 38	SB 41	Ch. 61	HB 93
Ch. 16	HB 294	Ch. 39	SB 46	Ch. 62	HB 98
Ch. 17	SB 21	Ch. 40	SB 51	Ch. 63	HB 118
Ch. 18	SB 27	Ch. 41	SB 53	Ch. 64	HB 119
Ch. 19	SB 31	Ch. 42	SB 60	Ch. 65	HB 120
Ch. 20	SB 62	Ch. 43	SB 65	Ch. 66	HB 127
Ch. 21	SB 72	Ch. 44	SB 73	Ch. 67	HB 169
Ch. 22	HB 39	Ch. 45	SB 95	Ch. 68	HB 176
Ch. 23	HB 76	Ch. 46	SB 152	Ch. 69	HB 233

MONTANA SESSION LAWS 2011

2026

Ch. 70	HB 252	Ch. 130	HB 250	Ch. 190	SB 55
Ch. 71	HB 287	Ch. 131	HB 298	Ch. 191	SB 160
Ch. 72	HB 356	Ch. 132	HB 319	Ch. 192	SB 194
Ch. 73	HB 367	Ch. 133	HB 324	Ch. 193	SB 208
Ch. 74	HB 399	Ch. 134	HB 337	Ch. 194	SB 210
Ch. 75	HB 419	Ch. 135	HB 338	Ch. 195	SB 223
Ch. 76	SB 19	Ch. 136	HB 401	Ch. 196	SB 236
Ch. 77	SB 203	Ch. 137	HB 403	Ch. 197	SB 248
Ch. 78	SB 211	Ch. 138	HB 432	Ch. 198	SB 275
Ch. 79	SB 256	Ch. 139	HB 449	Ch. 199	SB 280
Ch. 80	SB 258	Ch. 140	HB 467	Ch. 200	SB 287
Ch. 81	SB 289	Ch. 141	HB 481	Ch. 201	SB 290
Ch. 82	SB 335	Ch. 142	HB 517	Ch. 202	SB 355
Ch. 83	HB 28	Ch. 143	HB 523	Ch. 203	SB 268
Ch. 84	HB 37	Ch. 144	HB 568	Ch. 204	HB 61
Ch. 85	HB 52	Ch. 145	HB 422	Ch. 205	HB 95
Ch. 86	HB 63	Ch. 146	HB 41	Ch. 206	HB 103
Ch. 87	HB 126	Ch. 147	HB 49	Ch. 207	HB 178
Ch. 88	HB 181	Ch. 148	HB 77	Ch. 208	HB 191
Ch. 89	HB 255	Ch. 149	HB 102	Ch. 209	SB 213
Ch. 90	HB 426	Ch. 150	HB 110	Ch. 210	HB 251
Ch. 91	SB 32	Ch. 151	HB 116	Ch. 211	HB 288
Ch. 92	SB 34	Ch. 152	HB 123	Ch. 212	HB 300
Ch. 93	SB 38	Ch. 153	HB 131	Ch. 213	HB 352
Ch. 94	SB 47	Ch. 154	HB 134	Ch. 214	HB 380
Ch. 95	SB 67	Ch. 155	HB 135	Ch. 215	HB 529
Ch. 96	SB 103	Ch. 156	HB 185	Ch. 216	HB 535
Ch. 97	SB 128	Ch. 157	HB 225	Ch. 217	SB 89
Ch. 98	SB 342	Ch. 158	HB 256	Ch. 218	SB 140
Ch. 99	HB 70	Ch. 159	HB 269	Ch. 219	SB 179
Ch. 100	HB 94	Ch. 160	HB 315	Ch. 220	SB 180
Ch. 101	HB 99	Ch. 161	HB 391	Ch. 221	SB 184
Ch. 102	HB 141	Ch. 162	HB 430	Ch. 222	SB 213
Ch. 103	HB 254	Ch. 163	HB 487	Ch. 223	SB 304
Ch. 104	HB 259	Ch. 164	HB 498	Ch. 224	SB 320
Ch. 105	HB 270	Ch. 165	HB 528	Ch. 225	HB 12
Ch. 106	HB 273	Ch. 166	HB 594	Ch. 226	HB 69
Ch. 107	HB 293	Ch. 167	HB 334	Ch. 227	HB 125
Ch. 108	HB 348	Ch. 168	HB 508	Ch. 228	HB 279
Ch. 109	HB 374	Ch. 169	SB 222	Ch. 229	HB 469
Ch. 110	HB 428	Ch. 170	HB 66	Ch. 230	HB 548
Ch. 111	HB 484	Ch. 171	HB 421	Ch. 231	HB 584
Ch. 112	HB 497	Ch. 172	HB 480	Ch. 232	SB 28
Ch. 113	HB 536	Ch. 173	HB 547	Ch. 233	SB 43
Ch. 114	HB 573	Ch. 174	HB 566	Ch. 234	SB 52
Ch. 115	SB 7	Ch. 175	SB 74	Ch. 235	SB 68
Ch. 116	SB 12	Ch. 176	SB 76	Ch. 236	SB 120
Ch. 117	SB 49	Ch. 177	SB 91	Ch. 237	SB 278
Ch. 118	SB 92	Ch. 178	SB 115	Ch. 238	SB 337
Ch. 119	SB 189	Ch. 179	SB 118	Ch. 239	SB 352
Ch. 120	SB 205	Ch. 180	HB 187	Ch. 240	HB 51
Ch. 121	SB 361	Ch. 181	HB 195	Ch. 241	HB 83
Ch. 122	HB 25	Ch. 182	HB 330	Ch. 242	HB 91
Ch. 123	HB 80	Ch. 183	HB 339	Ch. 243	HB 107
Ch. 124	HB 82	Ch. 184	HB 479	Ch. 244	HB 166
Ch. 125	HB 117	Ch. 185	HB 491	Ch. 245	HB 196
Ch. 126	HB 142	Ch. 186	HB 575	Ch. 246	HB 216
Ch. 127	HB 171	Ch. 187	SB 3	Ch. 247	HB 277
Ch. 128	HB 212	Ch. 188	SB 5	Ch. 248	HB 291
Ch. 129	HB 229	Ch. 189	SB 9	Ch. 249	HB 295

Ch. 250	HB 336	Ch. 310	SB 418	Ch. 370	HB 159
Ch. 251	HB 411	Ch. 311	SB 426	Ch. 371	HB 165
Ch. 252	HB 522	Ch. 312	HB 604	Ch. 372	HB 310
Ch. 253	HB 538	Ch. 313	HB 15	Ch. 373	HB 460
Ch. 254	HB 541	Ch. 314	HB 29	Ch. 374	HB 560
Ch. 255	HB 552	Ch. 315	HB 43	Ch. 375	HB 561
Ch. 256	HB 602	Ch. 316	HB 47	Ch. 376	HB 562
Ch. 257	SB 30	Ch. 317	HB 90	Ch. 377	HB 565
Ch. 258	SB 124	Ch. 318	HB 106	Ch. 378	HB 621
Ch. 259	SB 146	Ch. 319	HB 111	Ch. 379	HB 641
Ch. 260	SB 218	Ch. 320	HB 133	Ch. 380	HB 642
Ch. 261	SB 219	Ch. 321	HB 198	Ch. 381	SB 166
Ch. 262	SB 242	Ch. 322	HB 249	Ch. 382	SB 206
Ch. 263	SB 246	Ch. 323	HB 262	Ch. 383	SB 212
Ch. 264	SB 285	Ch. 324	HB 296	Ch. 384	SB 279
Ch. 265	SB 288	Ch. 325	HB 297	Ch. 385	SB 305
Ch. 266	SB 357	Ch. 326	HB 370	Ch. 386	SB 338
Ch. 267	SB 367	Ch. 327	HB 409	Ch. 387	HB 5
Ch. 268	SB 374	Ch. 328	HB 458	Ch. 388	HB 7
Ch. 269	SB 413	Ch. 329	HB 518	Ch. 389	HB 351
Ch. 270	HB 188	Ch. 330	HB 525	Ch. 390	HB 363
Ch. 271	HB 327	Ch. 331	HB 530	Ch. 391	HB 372
Ch. 272	SB 135	Ch. 332	HB 533	Ch. 392	HB 377
Ch. 273	SB 138	Ch. 333	HB 543	Ch. 393	HB 495
Ch. 274	SB 149	Ch. 334	HB 559	Ch. 394	HB 613
Ch. 275	SB 327	Ch. 335	HB 587	Ch. 395	HB 619
Ch. 276	SB 382	Ch. 336	HB 607	Ch. 396	SB 233
Ch. 277	SB 389	Ch. 337	HB 611	Ch. 397	SB 241
Ch. 278	HB 618	Ch. 338	HB 615	Ch. 398	SB 292
Ch. 279	SB 59	Ch. 339	HB 622	Ch. 399	SB 295
Ch. 280	SB 319	Ch. 340	SB 11	Ch. 400	SB 348
Ch. 281	HB 3	Ch. 341	SB 126	Ch. 401	SB 409
Ch. 282	SB 15	Ch. 342	SB 132	Ch. 402	SB 125
Ch. 283	SB 42	Ch. 343	SB 153	Ch. 403	SB 207
Ch. 284	SB 238	Ch. 344	SB 187	Ch. 404	SB 229
Ch. 285	SB 333	Ch. 345	SB 215	Ch. 405	SB 265
Ch. 286	SB 347	Ch. 346	SB 221	Ch. 406	SB 266
Ch. 287	SB 385	Ch. 347	SB 283	Ch. 407	SB 286
Ch. 288	SB 412	Ch. 348	SB 294	Ch. 408	SB 297
Ch. 289	SB 420	Ch. 349	SB 326	Ch. 409	SB 298
Ch. 290	HB 265	Ch. 350	SB 331	Ch. 410	SB 312
Ch. 291	HB 416	Ch. 351	SB 351	Ch. 411	SB 372
Ch. 292	HB 172	Ch. 352	SB 354	Ch. 412	SB 29
Ch. 293	SB 1	Ch. 353	SB 411	Ch. 413	SB 100
Ch. 294	SB 16	Ch. 354	SB 417	Ch. 414	SB 108
Ch. 295	SB 75	Ch. 355	SB 429	Ch. 415	SB 136
Ch. 296	SB 81	Ch. 356	HB 132	Ch. 416	SB 143
Ch. 297	SB 87	Ch. 357	HB 258	Ch. 417	SB 277
Ch. 298	SB 99	Ch. 358	HB 477	Ch. 418	SB 329
Ch. 299	SB 173	Ch. 359	SB 35	Ch. 419	SB 423
Ch. 300	SB 195	Ch. 360	SB 36		
Ch. 301	SB 234	Ch. 361	SB 156		
Ch. 302	SB 267	Ch. 362	SB 410		
Ch. 303	SB 296	Ch. 363	HB 2		
Ch. 304	SB 311	Ch. 364	HB 4		
Ch. 305	SB 340	Ch. 365	HB 6		
Ch. 306	SB 376	Ch. 366	HB 8		
Ch. 307	HB 627	Ch. 367	HB 9		
Ch. 308	HB 638	Ch. 368	HB 10		
Ch. 309	SB 172	Ch. 369	HB 122		

EFFECTIVE DATES BY CHAPTER NUMBER

<u>Chapter No.</u>	<u>Bill No.</u>	<u>Effective Date</u>
Ch. 1	HB 1	01/31/2011
Ch. 2	HB 22	07/01/2011
Ch. 3	HB 21	10/01/2011
Ch. 4	HB 60	10/01/2011
Ch. 5	HB 54	03/11/2011
Ch. 6	HB 89	10/01/2011
Ch. 7	HB 19	03/16/2011
Ch. 8	HB 38	03/16/2011
Ch. 9	HB 44	10/01/2011
Ch. 10	HB 57	10/01/2011
Ch. 11	HB 74	03/16/2011
Ch. 12	HB 84	10/01/2011
Ch. 13	HB 101	07/01/2011
Ch. 14	HB 204	10/01/2011
Ch. 15	HB 208	03/16/2011
Ch. 16	HB 294	10/01/2011
Ch. 17	SB 21	07/01/2011
Ch. 18	SB 27	07/01/2011
Ch. 19	SB 31	10/01/2011
Ch. 20	SB 62	03/16/2011
Ch. 21	SB 72	10/01/2011
Ch. 22	HB 39	10/01/2011
Ch. 23	HB 76	03/18/2011
Ch. 24	HB 97	07/01/2011
Ch. 25	HB 182	03/18/2011
Ch. 26	SB 63	10/01/2011
Ch. 27	SB 78	03/18/2011
Ch. 28	HB 17	10/01/2011
Ch. 29	HB 24	10/01/2011
Ch. 30	HB 65	10/01/2011
Ch. 31	HB 96	10/01/2011
Ch. 32	HB 114	10/01/2011
Ch. 33	HB 156	03/23/2011
Ch. 34	HB 210	10/01/2011
Ch. 35	HB 263	10/01/2011
Ch. 36	HB 359	03/23/2011
Ch. 37	SB 26	10/01/2011
Ch. 38	SB 41	07/01/2011
Ch. 39	SB 46	10/01/2011
Ch. 40	SB 51	03/23/2011
Ch. 41	SB 53	03/23/2011
Ch. 42	SB 60	10/01/2011
Ch. 43	SB 65	03/23/2011
Ch. 44	SB 73	10/01/2011
Ch. 45	SB 95	10/01/2011
Ch. 46	SB 152	10/01/2011
Ch. 47	HB 58	03/24/2011
Ch. 48	HB 268	10/01/2011
Ch. 49	SB 64	10/01/2011
Ch. 50	SB 69	03/18/2012
Ch. 51	SB 165	10/01/2011
Ch. 52	SB 186	03/24/2011
Ch. 53	HB 23	03/25/2011
Ch. 54	HB 53	10/01/2011
Ch. 55	HB 62	03/25/2011
Ch. 56	HB 78	03/25/2011
Ch. 57	HB 79	03/25/2011
Ch. 58	HB 81	03/25/2011
Ch. 59	HB 86	07/01/2011

2029

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 60	HB 92	03/25/2011
Ch. 61	HB 93	07/01/2011
Ch. 62	HB 98	03/25/2011
Ch. 63	HB 118	03/25/2011
Ch. 64	HB 119	07/01/2011
Ch. 65	HB 120	10/01/2011
Ch. 66	HB 127	10/01/2011
Ch. 67	HB 169	03/25/2011
§§ 1, 2(1), and 3-5		
§ 2(2)		Effective on the date the secretary of state notifies the code commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed.
Ch. 68	HB 176	03/25/2011
Ch. 69	HB 233	03/25/2011
Ch. 70	HB 252	10/01/2011
Ch. 71	HB 287	10/01/2011
Ch. 72	HB 356	10/01/2011
Ch. 73	HB 367	03/25/2011
Ch. 74	HB 399	03/25/2011
Ch. 75	HB 419	10/01/2011
Ch. 76	SB 19	10/01/2011
Ch. 77	SB 203	03/25/2011
Ch. 78	SB 211	10/01/2011
Ch. 79	SB 256	10/01/2011
Ch. 80	SB 258	10/01/2011
Ch. 81	SB 289	10/01/2011
Ch. 82	SB 335	07/01/2011
Ch. 83	HB 28	03/30/2011
Ch. 84	HB 37	03/30/2011
Ch. 85	HB 52	10/01/2011
Ch. 86	HB 63	03/30/2011
Ch. 87	HB 126	10/01/2011
Ch. 88	HB 181	03/30/2011
Ch. 89	HB 255	10/01/2011
Ch. 90	HB 426	10/01/2011
Ch. 91	SB 32	03/30/2011
Ch. 92	SB 34	03/30/2011
Ch. 93	SB 38	07/01/2011
Ch. 94	SB 47	03/30/2011
Ch. 95	SB 67	03/30/2011
Ch. 96	SB 103	10/01/2011
Ch. 97	SB 128	10/01/2011
Ch. 98	SB 342	10/01/2011
Ch. 99	HB 70	07/01/2011
Ch. 100	HB 94	10/01/2011
Ch. 101	HB 99	01/01/2012
Ch. 102	HB 141	07/01/2011
Ch. 103	HB 254	04/01/2011
Ch. 104	HB 259	10/01/2011
Ch. 105	HB 270	04/01/2011
Ch. 106	HB 273	10/01/2011
Ch. 107	HB 293	04/01/2011
Ch. 108	HB 348	04/01/2011
Ch. 109	HB 374	10/01/2011
Ch. 110	HB 428	04/01/2011
Ch. 111	HB 484	04/01/2011
Ch. 112	HB 497	10/01/2011
Ch. 113	HB 536	04/01/2011
Ch. 114	HB 573	07/01/2011
Ch. 115	SB 7	04/01/2011

MONTANA SESSION LAWS 2011

2030

Ch. 116	SB	12	04/01/2011
Ch. 117	SB	49	01/01/2012
Ch. 118	SB	92	10/01/2011
Ch. 119	SB	189	10/01/2011
Ch. 120	SB	205	04/01/2011
Ch. 121	SB	361	04/01/2011
Ch. 122	HB	25	10/01/2011
Ch. 123	HB	80	10/01/2011
Ch. 124	HB	82	04/07/2011
Ch. 125	HB	117	10/01/2011
Ch. 126	HB	142	10/01/2011
Ch. 127	HB	171	01/01/2012
Ch. 128	HB	212	07/01/2011
Ch. 129	HB	229	10/01/2011
Ch. 130	HB	250	04/07/2011
Ch. 131	HB	298	10/01/2011
Ch. 132	HB	319	10/01/2011
Ch. 133	HB	324	04/07/2011
Ch. 134	HB	337	10/01/2011
Ch. 135	HB	338	10/01/2011
Ch. 136	HB	401	10/01/2011
Ch. 137	HB	403	07/01/2011
Ch. 138	HB	432	10/01/2011
Ch. 139	HB	449	10/01/2011
Ch. 140	HB	467	10/01/2011
Ch. 141	HB	481	10/01/2011
Ch. 142	HB	517	10/01/2011
Ch. 143	HB	523	10/01/2011
Ch. 144	HB	568	04/07/2011
Ch. 145	HB	422	04/07/2011
Ch. 146	HB	41	10/01/2011
Ch. 147	HB	49	04/08/2011
Ch. 148	HB	77	10/01/2011
Ch. 149	HB	102	10/01/2011
Ch. 150	HB	110	07/01/2011
Ch. 151	HB	116	07/01/2011
Ch. 152	HB	123	04/10/2011
Ch. 153	HB	131	10/01/2011
Ch. 154	HB	134	07/01/2011
Ch. 155	HB	135	07/01/2011
Ch. 156	HB	185	04/08/2011
Ch. 157	HB	225	04/08/2011
Ch. 158	HB	256	10/01/2011
Ch. 159	HB	269	10/01/2011
Ch. 160	HB	315	10/01/2011
Ch. 161	HB	391	10/01/2011
Ch. 162	HB	430	04/08/2011
Ch. 163	HB	487	04/08/2011
Ch. 164	HB	498	04/08/2011
Ch. 165	HB	528	10/01/2011
Ch. 166	HB	594	10/01/2011
Ch. 167	HB	334	04/12/2011
Ch. 168	HB	508	10/01/2011
Ch. 169	SB	222	10/01/2011
Ch. 170	HB	66	10/01/2011
Ch. 171	HB	421	10/01/2011
Ch. 172	HB	480	10/01/2011
Ch. 173	HB	547	07/01/2011
Ch. 174	HB	566	03/01/2012
Ch. 175	SB	74	07/01/2011
Ch. 176	SB	76	10/01/2011
Ch. 177	SB	91	04/14/2011
Ch. 178	SB	115	04/14/2011

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 179	SB	118	04/14/2011
Ch. 180	HB	187	10/01/2011
Ch. 181	HB	195	10/01/2011
Ch. 182	HB	330	10/01/2011
Ch. 183	HB	339	03/01/2012
Ch. 184	HB	479	04/15/2011
Ch. 185	HB	491	04/15/2011
Ch. 186	HB	575	04/15/2011
Ch. 187	SB	3	10/01/2011
Ch. 188	SB	5	04/15/2011
Ch. 189	SB	9	04/15/2011
Ch. 190	SB	55	04/15/2011
Ch. 191	SB	160	10/01/2011
Ch. 192	SB	194	10/01/2011
Ch. 193	SB	208	10/01/2011
Ch. 194	SB	210	10/01/2011
Ch. 195	SB	223	07/01/2011
Ch. 196	SB	236	04/15/2011
Ch. 197	SB	248	10/01/2011
Ch. 198	SB	275	10/01/2011
Ch. 199	SB	280	10/01/2011
Ch. 200	SB	287	07/01/2011
Ch. 201	SB	290	04/15/2011
Ch. 202	SB	355	07/01/2011
Ch. 203	SB	268	Effective upon approval by the electorate
Ch. 204	HB	61	10/01/2011
Ch. 205	HB	95	04/18/2011
Ch. 206	HB	103	04/18/2011
§§ 3 and 4			01/01/2012
§§ 1 and 2			10/01/2011
Ch. 207	HB	178	10/01/2011
Ch. 208	HB	191	04/18/2011
Ch. 209	HB	213	01/01/2012
Ch. 210	HB	251	10/01/2011
Ch. 211	HB	288	07/01/2011
Ch. 212	HB	300	10/01/2011
Ch. 213	HB	352	04/18/2011
Ch. 214	HB	380	10/01/2011
Ch. 215	HB	529	10/01/2011
Ch. 216	HB	535	10/01/2011
Ch. 217	SB	89	04/18/2011
Ch. 218	SB	140	04/18/2011
Ch. 219	SB	179	04/18/2011
Ch. 220	SB	180	04/18/2011
Ch. 221	SB	184	10/01/2011
Ch. 222	SB	213	04/18/2011
Ch. 223	SB	304	10/01/2011
Ch. 224	SB	320	04/18/2011
Ch. 225	HB	12	04/20/2011
Ch. 226	HB	69	10/01/2011
Ch. 227	HB	125	04/20/2011
Ch. 228	HB	279	04/20/2011
Ch. 229	HB	469	04/20/2011
Ch. 230	HB	548	04/20/2011
Ch. 231	HB	584	01/01/2012
Ch. 232	SB	28	04/20/2011
Ch. 233	SB	43	10/01/2011
Ch. 234	SB	52	10/01/2011
Ch. 235	SB	68	10/01/2011
Ch. 236	SB	120	07/01/2011
Ch. 237	SB	278	04/20/2011
Ch. 238	SB	337	10/01/2011
Ch. 239	SB	352	10/01/2011

MONTANA SESSION LAWS 2011

2032

Ch. 240	HB 51	07/01/2011
Ch. 241	HB 83	07/01/2011
Ch. 242	HB 91	01/01/2012
Ch. 243	HB 107	04/21/2011
Ch. 244	HB 166	04/21/2011
Ch. 245	HB 196	10/01/2011
Ch. 246	HB 216	10/01/2011
Ch. 247	HB 277	04/22/2011
Ch. 248	HB 291	04/21/2011
Ch. 249	HB 295	04/21/2011
Ch. 250	HB 336	10/01/2011
Ch. 251	HB 411	04/21/2011
Ch. 252	HB 522	10/01/2011
Ch. 253	HB 538	04/22/2011
Ch. 254	HB 541	04/21/2011
Ch. 255	HB 552	07/01/2011
Ch. 256	§§ 1-3, 5, and 6 § 4	HB 602 04/21/2011 07/01/2011
Ch. 257	SB 30	07/01/2011
Ch. 258	SB 124	10/01/2011
Ch. 259	SB 146	04/21/2011
Ch. 260	SB 218	04/21/2011
Ch. 261	§§ 1, 4, and 5 §§ 2 and 3	SB 219 04/21/2011 10/01/2011
Ch. 262	SB 242	07/01/2011
Ch. 263	SB 246	04/21/2011
Ch. 264	SB 285	Effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009.
Ch. 265	SB 288	10/01/2011
Ch. 266	SB 357	04/21/2011
Ch. 267	SB 367	10/01/2011
Ch. 268	SB 374	10/01/2011
Ch. 269	SB 413	04/21/2011
Ch. 270	HB 188	10/01/2011
Ch. 271	HB 327	04/23/2011
Ch. 272	SB 135	04/22/2011
Ch. 273	SB 138	07/01/2011
Ch. 274	SB 149	10/01/2011
Ch. 275	SB 327	04/22/2011
Ch. 276	SB 382	10/01/2011
Ch. 277	SB 389	10/01/2011
Ch. 278	HB 618	10/01/2011
Ch. 279	SB 59	04/27/2011
Ch. 280	SB 319	07/01/2011
Ch. 281	HB 3	04/28/2011
Ch. 282	SB 15	04/28/2011
Ch. 283	SB 42	04/28/2011
Ch. 284	SB 238	07/01/2011
Ch. 285	SB 333	01/01/2012
Ch. 286	SB 347	10/01/2011
Ch. 287	SB 385	04/28/2011
Ch. 288	SB 412	01/01/2012
Ch. 289	SB 420	04/28/2011
Ch. 290	HB 265	04/28/2011
Ch. 291	HB 416	04/28/2011
Ch. 292	HB 172	03/01/2012
Ch. 293	SB 1	01/01/2012
Ch. 294	SB 16	04/29/2011
Ch. 295	SB 75	04/29/2011
Ch. 296	§§ 11-13 §§ 7 and 8 §§ 1-6, 9, and 10.	SB 81 10/01/2011 01/01/2012 01/30/2012

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 297	SB	87	04/29/2011
Ch. 298	SB	99	03/01/2012
Ch. 299	SB	173	10/01/2011
Ch. 300	SB	195	04/29/2011
Ch. 301	SB	234	04/29/2011
Ch. 302	SB	267	10/01/2011
Ch. 303	SB	296	04/29/2011
Ch. 304	SB	311	10/01/2011
Ch. 305	SB	340	04/29/2011
Ch. 306	SB	376	04/29/2011
Ch. 307	HB	627	If approved by the electorate, this act is effective January 1, 2013.
Ch. 308	HB	638	If approved by the electorate, this act is effective January 1, 2013.
Ch. 309	SB	172	10/01/2011
Ch. 310	SB	418	If approved by the electorate, this act is effective January 1, 2013.
Ch. 311	SB	426	If approved by the electorate, this act is effective January 1, 2013.
Ch. 312	HB	604	05/04/2011
Ch. 313	HB	15	07/01/2011
Ch. 314	HB	29	05/05/2011
Ch. 315	HB	43	05/06/2011
Ch. 316	HB	47	05/05/2011
Ch. 317	HB	90	10/01/2011
Ch. 318	HB	106	10/01/2011
Ch. 319	HB	111	07/01/2011
Ch. 320	HB	133	10/01/2011
Ch. 321	HB	198	05/09/2011
Ch. 322	HB	249	10/01/2011
Ch. 323	HB	262	05/06/2011
Ch. 324	HB	296	05/06/2011
Ch. 325	HB	297	10/01/2011
Ch. 326	HB	370	01/01/2012
Ch. 327	HB	409	10/01/2011
Ch. 328	HB	458	10/01/2011
Ch. 329	HB	518	10/01/2011
Ch. 330	HB	525	05/05/2011
Ch. 331	HB	530	10/01/2011
Ch. 332	HB	533	05/06/2011
Ch. 333	HB	543	10/01/2011
Ch. 334	HB	559	10/01/2011
Ch. 335	HB	587	07/01/2011
Ch. 336	HB	607	05/05/2011
Ch. 337	HB	611	07/01/2011
Ch. 338	HB	615	05/05/2011
Ch. 339	HB	622	07/01/2011
Ch. 340	SB	11	07/01/2011
Ch. 341	SB	126	05/06/2011
Ch. 342	SB	132	10/01/2011
Ch. 343	SB	153	10/01/2011
Ch. 344	SB	187	07/01/2011
Ch. 345	SB	215	05/06/2011
Ch. 346	SB	221	10/01/2011
Ch. 347	SB	283	10/01/2011
Ch. 348	SB	294	07/01/2011
Ch. 349	SB	326	07/01/2011
Ch. 350	SB	331	05/06/2011
Ch. 351	SB	351	05/06/2011
Ch. 352	SB	354	10/01/2011
Ch. 353	SB	411	05/06/2011

MONTANA SESSION LAWS 2011

2034

Ch. 354	SB	417	10/01/2011
Ch. 355	§§ 1 and 3-5.	SB 429	05/06/2011
	§ 2		10/01/2011
Ch. 356	HB	132	10/01/2011
Ch. 357	HB	258	05/09/2011
Ch. 358	HB	477	07/01/2011
Ch. 359	SB	35	10/01/2011
Ch. 360	SB	36	05/09/2011
Ch. 361	SB	156	05/09/2011
Ch. 362	SB	410	05/09/2011
Ch. 363	HB	2	07/01/2011
Ch. 364	HB	4	05/12/2011
Ch. 365	HB	6	07/01/2011
Ch. 366	HB	8	07/01/2011
Ch. 367	HB	9	07/01/2011
Ch. 368	HB	10	05/12/2011
Ch. 369	HB	122	07/01/2011
Ch. 370	HB	159	10/01/2011
Ch. 371	HB	165	07/01/2011
Ch. 372	HB	310	01/01/2013
Ch. 373	HB	460	05/12/2011
Ch. 374	HB	560	10/01/2011
Ch. 375	HB	561	10/01/2011
Ch. 376	HB	562	10/01/2011
Ch. 377	HB	565	10/01/2011
Ch. 378	HB	621	07/01/2011
Ch. 379	HB	641	07/01/2011
Ch. 380	§§ 1, 2, 4, and 5.	HB 642	05/12/2011
	§ 3		07/01/2011
Ch. 381	SB	166	10/01/2011
Ch. 382	SB	206	05/12/2011
Ch. 383	SB	212	05/12/2011
Ch. 384	SB	279	10/01/2011
Ch. 385	SB	305	05/12/2011
Ch. 386	SB	338	10/01/2011
Ch. 387	HB	5	05/12/2011
Ch. 388	HB	7	07/01/2011
Ch. 389	HB	351	07/01/2011
Ch. 390	HB	363	07/01/2011
Ch. 391	HB	372	07/01/2011
Ch. 392	HB	377	10/01/2011
Ch. 393	HB	495	07/01/2011
Ch. 394	HB	613	07/01/2011
Ch. 395	HB	619	07/01/2011
Ch. 396	SB	233	05/12/2011
Ch. 397	SB	241	05/12/2011
Ch. 398	SB	292	10/01/2011
Ch. 399	SB	295	07/01/2012
Ch. 400	SB	348	07/01/2011
Ch. 401	SB	409	05/12/2011
Ch. 402	SB	125	10/01/2011
Ch. 403	SB	207	05/13/2011
Ch. 404	SB	229	10/01/2011
Ch. 405	SB	265	07/01/2011
Ch. 406	SB	266	05/13/2011
Ch. 407	SB	286	05/13/2011
Ch. 408	SB	297	Effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that this act is approved pursuant to 30 CFR 732.17.
Ch. 409	SB	298	10/01/2011
Ch. 410	SB	312	10/01/2011

2035

EFFECTIVE DATES BY DATE

Ch. 411	SB 372	07/01/2011
Ch. 412	SB 29	10/01/2011
Ch. 413	SB 100	05/13/2011
Ch. 414	SB 108	05/14/2011
Ch. 415	SB 136	03/01/2012
Ch. 416	SB 143	05/14/2011
Ch. 417	SB 277	07/01/2011
Ch. 418	SB 329	05/13/2011
§§ 1-8 and 11-29		07/01/2013
§§ 9 and 10		
Ch. 419	SB 423	05/13/2011
§ 34 (The repeal of 50-46-103 as provided in section 34)		05/13/2011
§ 1-19, 21-29, 32, 36, 37, and 39		07/01/2011
§ 34 (The repeal of all sections other than 50-46-103, as provided in section 34)		07/01/2011

EFFECTIVE DATES BY DATE

<u>Effective Date</u>	<u>Chapter No.</u>	<u>Bill No.</u>
01/31/2011	Ch. 1	HB 1
03/11/2011	Ch. 5	HB 54
03/16/2011	Ch. 7	HB 19
03/16/2011	Ch. 8	HB 38
03/16/2011	Ch. 11	HB 74
03/16/2011	Ch. 15	HB 208
03/16/2011	Ch. 20	SB 62
03/18/2011	Ch. 23	HB 76
03/18/2011	Ch. 25	HB 182
03/18/2011	Ch. 27	SB 78
03/23/2011	Ch. 33	HB 156
03/23/2011	Ch. 36	HB 359
03/23/2011	Ch. 40	SB 51
03/23/2011	Ch. 41	SB 53
03/23/2011	Ch. 43	SB 65
03/24/2011	Ch. 47	HB 58
03/24/2011	Ch. 52	SB 186
03/25/2011	Ch. 53	HB 23
03/25/2011	Ch. 55	HB 62
03/25/2011	Ch. 56	HB 78
03/25/2011	Ch. 57	HB 79
03/25/2011	Ch. 58	HB 81
03/25/2011	Ch. 60	HB 92
03/25/2011	Ch. 62	HB 98
03/25/2011	Ch. 63	HB 118
03/25/2011	Ch. 67	HB 169
	§§ 1, 2(1), and 3-5	
03/25/2011	Ch. 68	HB 176
03/25/2011	Ch. 69	HB 233
03/25/2011	Ch. 73	HB 367
03/25/2011	Ch. 74	HB 399
03/25/2011	Ch. 77	SB 203
03/30/2011	Ch. 83	HB 28
03/30/2011	Ch. 84	HB 37
03/30/2011	Ch. 86	HB 63
03/30/2011	Ch. 88	HB 181
03/30/2011	Ch. 91	SB 32
03/30/2011	Ch. 92	SB 34
03/30/2011	Ch. 94	SB 47
03/30/2011	Ch. 95	SB 67
04/01/2011	Ch. 103	HB 254
04/01/2011	Ch. 105	HB 270

MONTANA SESSION LAWS 2011

2036

04/01/2011	Ch. 107	HB 293
04/01/2011	Ch. 108	HB 348
04/01/2011	Ch. 110	HB 428
04/01/2011	Ch. 111	HB 484
04/01/2011	Ch. 113	HB 536
04/01/2011	Ch. 115	SB 7
04/01/2011	Ch. 116	SB 12
04/01/2011	Ch. 120	SB 205
04/01/2011	Ch. 121	SB 361
04/07/2011	Ch. 124	HB 82
04/07/2011	Ch. 130	HB 250
04/07/2011	Ch. 133	HB 324
04/07/2011	Ch. 144	HB 568
04/07/2011	Ch. 145	HB 422
04/08/2011	Ch. 147	HB 49
04/08/2011	Ch. 156	HB 185
04/08/2011	Ch. 157	HB 225
04/08/2011	Ch. 162	HB 430
04/08/2011	Ch. 163	HB 487
04/08/2011	Ch. 164	HB 498
04/10/2011	Ch. 152	HB 123
04/12/2011	Ch. 167	HB 334
04/14/2011	Ch. 177	SB 91
04/14/2011	Ch. 178	SB 115
04/14/2011	Ch. 179	SB 118
04/15/2011	Ch. 184	HB 479
04/15/2011	Ch. 185	HB 491
04/15/2011	Ch. 186	HB 575
04/15/2011	Ch. 188	SB 5
04/15/2011	Ch. 189	SB 9
04/15/2011	Ch. 190	SB 55
04/15/2011	Ch. 196	SB 236
04/15/2011	Ch. 201	SB 290
04/18/2011	Ch. 205	HB 95
04/18/2011	Ch. 206	HB 103
	§§ 3 and 4	
04/18/2011	Ch. 208	HB 191
04/18/2011	Ch. 213	HB 352
04/18/2011	Ch. 217	SB 89
04/18/2011	Ch. 218	SB 140
04/18/2011	Ch. 219	SB 179
04/18/2011	Ch. 220	SB 180
04/18/2011	Ch. 222	SB 213
04/18/2011	Ch. 224	SB 320
04/20/2011	Ch. 225	HB 12
04/20/2011	Ch. 227	HB 125
04/20/2011	Ch. 228	HB 279
04/20/2011	Ch. 229	HB 469
04/20/2011	Ch. 230	HB 548
04/20/2011	Ch. 232	SB 28
04/20/2011	Ch. 237	SB 278
04/21/2011	Ch. 243	HB 107
04/21/2011	Ch. 244	HB 166
04/21/2011	Ch. 248	HB 291
04/21/2011	Ch. 249	HB 295
04/21/2011	Ch. 251	HB 411
04/21/2011	Ch. 254	HB 541
04/21/2011	Ch. 256	HB 602
	§§ 1-3, 5, and 6	
04/21/2011	Ch. 259	SB 146
04/21/2011	Ch. 260	SB 218
04/21/2011	Ch. 261	SB 219
	§§ 1, 4, and 5	

EFFECTIVE DATES BY DATE

04/21/2011	Ch.	263	SB	246
04/21/2011	Ch.	266	SB	357
04/21/2011	Ch.	269	SB	413
04/22/2011	Ch.	247	HB	277
04/22/2011	Ch.	253	HB	538
04/22/2011	Ch.	272	SB	135
04/22/2011	Ch.	275	SB	327
04/23/2011	Ch.	271	HB	327
04/27/2011	Ch.	279	SB	59
04/28/2011	Ch.	281	HB	3
04/28/2011	Ch.	282	SB	15
04/28/2011	Ch.	283	SB	42
04/28/2011	Ch.	287	SB	385
04/28/2011	Ch.	289	SB	420
04/28/2011	Ch.	290	HB	265
04/28/2011	Ch.	291	HB	416
04/29/2011	Ch.	294	SB	16
04/29/2011	Ch.	295	SB	75
04/29/2011	Ch.	297	SB	87
04/29/2011	Ch.	300	SB	195
04/29/2011	Ch.	301	SB	234
04/29/2011	Ch.	303	SB	296
04/29/2011	Ch.	305	SB	340
04/29/2011	Ch.	306	SB	376
05/04/2011	Ch.	312	HB	604
05/05/2011	Ch.	314	HB	29
05/05/2011	Ch.	316	HB	47
05/05/2011	Ch.	330	HB	525
05/05/2011	Ch.	336	HB	607
05/05/2011	Ch.	338	HB	615
05/06/2011	Ch.	315	HB	43
05/06/2011	Ch.	323	HB	262
		§§ 1, 3, and 4		
05/06/2011	Ch.	324	HB	296
		§§ 2-4 and 7-9		
05/06/2011	Ch.	332	HB	533
05/06/2011	Ch.	341	SB	126
05/06/2011	Ch.	345	SB	215
05/06/2011	Ch.	350	SB	331
05/06/2011	Ch.	351	SB	351
05/06/2011	Ch.	353	SB	411
05/06/2011	Ch.	355	SB	429
		§§ 1 and 3-5		
05/09/2011	Ch.	321	HB	198
05/09/2011	Ch.	357	HB	258
05/09/2011	Ch.	360	SB	36
05/09/2011	Ch.	361	SB	156
05/09/2011	Ch.	362	SB	410
05/12/2011	Ch.	364	HB	4
05/12/2011	Ch.	368	HB	10
05/12/2011	Ch.	373	HB	460
05/12/2011	Ch.	380	HB	642
		§§ 1, 2, 4, and 5		
05/12/2011	Ch.	382	SB	206
05/12/2011	Ch.	383	SB	212
05/12/2011	Ch.	385	SB	305
05/12/2011	Ch.	387	HB	5
05/12/2011	Ch.	396	SB	233
05/12/2011	Ch.	397	SB	241
05/12/2011	Ch.	401	SB	409
05/13/2011	Ch.	403	SB	207
05/13/2011	Ch.	406	SB	266
05/13/2011	Ch.	407	SB	286

MONTANA SESSION LAWS 2011

2038

05/13/2011	Ch. 413	SB 100
05/13/2011	Ch. 418	SB 329
	§§ 1-8 and 11-29	
05/13/2011	Ch. 419	SB 423
	§§ 20, 30, 31, 33, 35, 38, and 40	
	§ 34, The repeal of 50-46-103 as provided in section 34	
05/14/2011	Ch. 414	SB 108
05/14/2011	Ch. 416	SB 143
07/01/2011	Ch. 2	HB 22
07/01/2011	Ch. 13	HB 101
07/01/2011	Ch. 17	SB 21
07/01/2011	Ch. 18	SB 27
07/01/2011	Ch. 24	HB 97
07/01/2011	Ch. 38	SB 41
07/01/2011	Ch. 59	HB 86
07/01/2011	Ch. 61	HB 93
07/01/2011	Ch. 64	HB 119
07/01/2011	Ch. 82	SB 335
07/01/2011	Ch. 93	SB 38
07/01/2011	Ch. 99	HB 70
07/01/2011	Ch. 102	HB 141
07/01/2011	Ch. 114	HB 573
07/01/2011	Ch. 128	HB 212
07/01/2011	Ch. 137	HB 403
07/01/2011	Ch. 150	HB 110
07/01/2011	Ch. 151	HB 116
07/01/2011	Ch. 154	HB 134
07/01/2011	Ch. 155	HB 135
07/01/2011	Ch. 173	HB 547
07/01/2011	Ch. 175	SB 74
07/01/2011	Ch. 195	SB 223
07/01/2011	Ch. 200	SB 287
07/01/2011	Ch. 202	SB 355
07/01/2011	Ch. 211	HB 288
07/01/2011	Ch. 236	SB 120
07/01/2011	Ch. 240	HB 51
07/01/2011	Ch. 241	HB 83
07/01/2011	Ch. 255	HB 552
07/01/2011	Ch. 256	HB 602
	§ 4	
07/01/2011	Ch. 257	SB 30
07/01/2011	Ch. 262	SB 242
07/01/2011	Ch. 273	SB 138
07/01/2011	Ch. 280	SB 319
07/01/2011	Ch. 284	SB 238
07/01/2011	Ch. 313	HB 15
07/01/2011	Ch. 319	HB 111
07/01/2011	Ch. 323	HB 262
	§ 2	
07/01/2011	Ch. 324	HB 296
	§§ 1, 5, and 6	
07/01/2011	Ch. 335	HB 587
07/01/2011	Ch. 337	HB 611
07/01/2011	Ch. 339	HB 622
07/01/2011	Ch. 340	SB 11
07/01/2011	Ch. 344	SB 187
07/01/2011	Ch. 348	SB 294
07/01/2011	Ch. 349	SB 326
07/01/2011	Ch. 358	HB 477
07/01/2011	Ch. 363	HB 2
07/01/2011	Ch. 365	HB 6
07/01/2011	Ch. 366	HB 8

EFFECTIVE DATES BY DATE

07/01/2011	Ch.	367	HB	9
07/01/2011	Ch.	369	HB	122
07/01/2011	Ch.	371	HB	165
07/01/2011	Ch.	378	HB	621
07/01/2011	Ch.	379	HB	641
07/01/2011	Ch.	380	HB	642
		§ 3		
07/01/2011	Ch.	388	HB	7
07/01/2011	Ch.	389	HB	351
07/01/2011	Ch.	390	HB	363
07/01/2011	Ch.	391	HB	372
07/01/2011	Ch.	393	HB	495
07/01/2011	Ch.	394	HB	613
07/01/2011	Ch.	395	HB	619
07/01/2011	Ch.	400	SB	348
07/01/2011	Ch.	405	SB	265
07/01/2011	Ch.	411	SB	372
07/01/2011	Ch.	417	SB	277
07/01/2011	Ch.	419	SB	423
		§ 1-19, 21-29, 32, 36, 37, and 39		
		§ 34, The repeal of all sections other than 50-46-103, as provided in section 34		
10/01/2011	Ch.	3	HB	21
10/01/2011	Ch.	4	HB	60
10/01/2011	Ch.	6	HB	89
10/01/2011	Ch.	9	HB	44
10/01/2011	Ch.	10	HB	57
10/01/2011	Ch.	12	HB	84
10/01/2011	Ch.	14	HB	204
10/01/2011	Ch.	16	HB	294
10/01/2011	Ch.	19	SB	31
10/01/2011	Ch.	21	SB	72
10/01/2011	Ch.	22	HB	39
10/01/2011	Ch.	26	SB	63
10/01/2011	Ch.	28	HB	17
10/01/2011	Ch.	29	HB	24
10/01/2011	Ch.	30	HB	65
10/01/2011	Ch.	31	HB	96
10/01/2011	Ch.	32	HB	114
10/01/2011	Ch.	34	HB	210
10/01/2011	Ch.	35	HB	263
10/01/2011	Ch.	37	SB	26
10/01/2011	Ch.	39	SB	46
10/01/2011	Ch.	42	SB	60
10/01/2011	Ch.	44	SB	73
10/01/2011	Ch.	45	SB	95
10/01/2011	Ch.	46	SB	152
10/01/2011	Ch.	48	HB	268
10/01/2011	Ch.	49	SB	64
10/01/2011	Ch.	51	SB	165
10/01/2011	Ch.	54	HB	53
10/01/2011	Ch.	65	HB	120
10/01/2011	Ch.	66	HB	127
10/01/2011	Ch.	70	HB	252
10/01/2011	Ch.	71	HB	287
10/01/2011	Ch.	72	HB	356
10/01/2011	Ch.	75	HB	419
10/01/2011	Ch.	76	SB	19
10/01/2011	Ch.	78	SB	211
10/01/2011	Ch.	79	SB	256
10/01/2011	Ch.	80	SB	258
10/01/2011	Ch.	81	SB	289

MONTANA SESSION LAWS 2011

2040

10/01/2011	Ch.	85	HB	52
10/01/2011	Ch.	87	HB	126
10/01/2011	Ch.	89	HB	255
10/01/2011	Ch.	90	HB	426
10/01/2011	Ch.	96	SB	103
10/01/2011	Ch.	97	SB	128
10/01/2011	Ch.	98	SB	342
10/01/2011	Ch.	100	HB	94
10/01/2011	Ch.	104	HB	259
10/01/2011	Ch.	106	HB	273
10/01/2011	Ch.	109	HB	374
10/01/2011	Ch.	112	HB	497
10/01/2011	Ch.	118	SB	92
10/01/2011	Ch.	119	SB	189
10/01/2011	Ch.	122	HB	25
10/01/2011	Ch.	123	HB	80
10/01/2011	Ch.	125	HB	117
10/01/2011	Ch.	126	HB	142
10/01/2011	Ch.	129	HB	229
10/01/2011	Ch.	131	HB	298
10/01/2011	Ch.	132	HB	319
10/01/2011	Ch.	134	HB	337
10/01/2011	Ch.	135	HB	338
10/01/2011	Ch.	136	HB	401
10/01/2011	Ch.	138	HB	432
10/01/2011	Ch.	139	HB	449
10/01/2011	Ch.	140	HB	467
10/01/2011	Ch.	141	HB	481
10/01/2011	Ch.	142	HB	517
10/01/2011	Ch.	143	HB	523
10/01/2011	Ch.	146	HB	41
10/01/2011	Ch.	148	HB	77
10/01/2011	Ch.	149	HB	102
10/01/2011	Ch.	153	HB	131
10/01/2011	Ch.	158	HB	256
10/01/2011	Ch.	159	HB	269
10/01/2011	Ch.	160	HB	315
10/01/2011	Ch.	161	HB	391
10/01/2011	Ch.	165	HB	528
10/01/2011	Ch.	166	HB	594
10/01/2011	Ch.	168	HB	508
10/01/2011	Ch.	169	SB	222
10/01/2011	Ch.	170	HB	66
10/01/2011	Ch.	171	HB	421
10/01/2011	Ch.	172	HB	480
10/01/2011	Ch.	176	SB	76
10/01/2011	Ch.	180	HB	187
10/01/2011	Ch.	181	HB	195
10/01/2011	Ch.	182	HB	330
10/01/2011	Ch.	187	SB	3
10/01/2011	Ch.	191	SB	160
10/01/2011	Ch.	192	SB	194
10/01/2011	Ch.	193	SB	208
10/01/2011	Ch.	194	SB	210
10/01/2011	Ch.	197	SB	248
10/01/2011	Ch.	198	SB	275
10/01/2011	Ch.	199	SB	280
10/01/2011	Ch.	204	HB	61
10/01/2011	Ch.	207	HB	178
10/01/2011	Ch.	210	HB	251
10/01/2011	Ch.	212	HB	300
10/01/2011	Ch.	214	HB	380
10/01/2011	Ch.	215	HB	529

EFFECTIVE DATES BY DATE

10/01/2011	Ch.	216	HB	535
10/01/2011	Ch.	221	SB	184
10/01/2011	Ch.	223	SB	304
10/01/2011	Ch.	226	HB	69
10/01/2011	Ch.	233	SB	43
10/01/2011	Ch.	234	SB	52
10/01/2011	Ch.	235	SB	68
10/01/2011	Ch.	238	SB	337
10/01/2011	Ch.	239	SB	352
10/01/2011	Ch.	245	HB	196
10/01/2011	Ch.	246	HB	216
10/01/2011	Ch.	250	HB	336
10/01/2011	Ch.	252	HB	522
10/01/2011	Ch.	258	SB	124
10/01/2011	Ch.	261	SB	219
		§§ 2 and 3		
10/01/2011	Ch.	265	SB	288
10/01/2011	Ch.	267	SB	367
10/01/2011	Ch.	268	SB	374
10/01/2011	Ch.	270	HB	188
10/01/2011	Ch.	274	SB	149
10/01/2011	Ch.	276	SB	382
10/01/2011	Ch.	277	SB	389
10/01/2011	Ch.	278	HB	618
10/01/2011	Ch.	286	SB	347
10/01/2011	Ch.	296	SB	81
		§§ 11-13		
10/01/2011	Ch.	299	SB	173
10/01/2011	Ch.	302	SB	267
10/01/2011	Ch.	304	SB	311
10/01/2011	Ch.	309	SB	172
10/01/2011	Ch.	317	HB	90
10/01/2011	Ch.	318	HB	106
10/01/2011	Ch.	320	HB	133
10/01/2011	Ch.	322	HB	249
10/01/2011	Ch.	325	HB	297
10/01/2011	Ch.	327	HB	409
10/01/2011	Ch.	328	HB	458
10/01/2011	Ch.	329	HB	518
10/01/2011	Ch.	331	HB	530
10/01/2011	Ch.	333	HB	543
10/01/2011	Ch.	334	HB	559
10/01/2011	Ch.	342	SB	132
10/01/2011	Ch.	343	SB	153
10/01/2011	Ch.	346	SB	221
10/01/2011	Ch.	347	SB	283
10/01/2011	Ch.	352	SB	354
10/01/2011	Ch.	354	SB	417
10/01/2011	Ch.	355	SB	429
		§ 2		
10/01/2011	Ch.	356	HB	132
10/01/2011	Ch.	359	SB	35
10/01/2011	Ch.	370	HB	159
10/01/2011	Ch.	374	HB	560
10/01/2011	Ch.	375	HB	561
10/01/2011	Ch.	376	HB	562
10/01/2011	Ch.	377	HB	565
10/01/2011	Ch.	381	SB	166
10/01/2011	Ch.	384	SB	279
10/01/2011	Ch.	386	SB	338
10/01/2011	Ch.	392	HB	377
10/01/2011	Ch.	398	SB	292
10/01/2011	Ch.	402	SB	125

MONTANA SESSION LAWS 2011

2042

10/01/2011	Ch.	404	SB	229
10/01/2011	Ch.	409	SB	298
10/01/2011	Ch.	410	SB	312
10/01/2011	Ch.	412	SB	29
01/01/2012	Ch.	101	HB	99
01/01/2012	Ch.	117	SB	49
01/01/2012	Ch.	127	HB	171
01/01/2012	Ch.	206	HB	103
		§§ 1 and 2		
01/01/2012	Ch.	209	HB	213
01/01/2012	Ch.	231	HB	584
01/01/2012	Ch.	242	HB	91
01/01/2012	Ch.	285	SB	333
01/01/2012	Ch.	288	SB	412
01/01/2012	Ch.	293	SB	1
01/01/2012	Ch.	296	SB	81
		§§ 7 and 8		
01/01/2012	Ch.	326	HB	370
01/30/2012	Ch.	296	SB	81
		§§ 1-6, 9, and 10		
03/01/2012	Ch.	174	HB	566
03/01/2012	Ch.	183	HB	339
03/01/2012	Ch.	292	HB	172
03/01/2012	Ch.	298	SB	99
03/01/2012	Ch.	415	SB	136
03/18/2012	Ch.	50	SB	69
07/01/2012	Ch.	399	SB	295
01/01/2013	Ch.	372	HB	310
07/01/2013	Ch.	418	SB	329
		§§ 9 and 10		
?	Ch.	67	HB	169
		(§ 2(2), Effective on the date the secretary of state notifies the code commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed.)		
?	Ch.	203	SB	268
		(Effective upon approval by the electorate.)		
?	Ch.	264	SB	285
		(Effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009.)		
?	Ch.	307	HB	627
		(If approved by the electorate, this act is effective January 1, 2013.)		
?	Ch.	308	HB	638
		(If approved by the electorate, this act is effective January 1, 2013.)		
?	Ch.	310	SB	418
		(If approved by the electorate, this act is effective January 1, 2013.)		

2043

EFFECTIVE DATES BY DATE

? Ch. 311 SB 426
		(If approved by the electorate, this act is effective January 1, 2013.)
? Ch. 408 SB 297
		(Effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that this act is approved pursuant to 30 CFR 732.17.)

	3	53-9-128		5	30-10-1005		18	19-17-404
33	1	10-2-501		6	30-10-1006		19	19-17-411
	2	Effective date		7	30-10-1007		20	19-17-412
34	1	61-10-124		8	30-10-1008		21	19-17-501
35	1	7-13-2303		9	17-7-502		22	19-17-502
36	1	39-71-703		10	30-10-103		23	19-17-503
	2	39-71-721		11	30-10-305		24	19-17-506
	3	39-71-741		12	Codification		25	19-17-601
	4	Effective date			instruction		26	19-17-602
	5	Retroactive applicability		13	Severability		27	19-17-606
				14	Effective date		28	Repealer
37	1	40-15-201		15	Applicability		29	Directions to code
38	1	3-1-102		16	Termination			commissioner
	2	3-11-101	59	1	19-20-101		30	Codification
	3	3-11-109		2	19-20-102			instructions
	4	3-11-110		3	19-20-203		31	Effective date
	5	25-33-301		4	19-20-208	65	1	2-3-212
	6	46-17-311		5	19-20-305	66	1	23-5-112
	7	Saving clause		6	19-20-405		2	23-5-412
	8	Codification instruction		7	19-20-701		3	23-5-608
	9	Effective date		8	19-20-702	67	1	35-19-311
39	1	46-30-411		9	19-20-703		2	Repealer
40	1	23-7-311		10	19-20-705		3	Saving clause
	2	Effective date		11	19-20-715		4	Transition
41	1	2-3-301		12	19-20-717		5	Effective dates —
	2	2-4-302		13	19-20-721			contingency
	3	Effective date		14	19-20-731	68	1	87-2-706
42	1	30-14-1726		15	19-20-733		2	Effective date
	2	30-14-1727		16	19-20-805	69	1	69-3-603
43	1	90-4-1003		17	19-20-1001		2	Saving clause
	2	Effective date		18	19-20-1002		3	Severability
44	1	20-7-401		19	19-20-1003		4	Effective date
	2	20-7-411		20	19-20-1101		5	Applicability
45	1	7-4-2636		21	Repealer	70	1	17-1-106
46	1	45-5-502		22	Effective date	71	1	2-15-3113
47	1	85-20-1007	60	1	69-3-604		2	87-1-217
	2	Effective date		2	Saving clause	72	1	37-35-102
48	1	27-1-717		3	Effective date	73	1	61-3-303
49	1	32-1-220	61	4	Applicability		2	61-3-312
	2	32-1-372		1	17-7-502		3	61-6-105
	3	32-1-381		2	76-13-410		4	61-6-157
50	1	2-17-808		3	76-13-416		5	61-6-302
	2	Effective date		4	Codification instruction		6	Effective date
51	1	37-1-131				74	1	61-3-205
52	1	33-20-1501		5	Effective date		2	Effective date
	2	Effective date	62	6	Termination	75	1	33-28-101
53	1	2-4-302		1	10-3-801		2	33-28-102
	2	Effective date		2	77-1-804		3	33-28-104
54	1	2-18-704		3	87-1-601		4	33-28-107
	2	33-1-102	63	4	Effective date		5	33-28-202
	3	33-22-129		1	2-15-1019		6	33-28-301
	4	33-22-134		2	Effective date —		7	33-28-302
	5	33-22-136			applicability		8	33-28-304
	6	Contingent voidness	64	1	7-33-2110	76	1	72-6-121
				2	7-33-2311	77	1	16-1-106
				3	7-33-2316		2	16-3-303
55	1	Repealer		4	19-2-408		3	Effective date
	2	Saving clause		5	19-17-102	78	1	61-3-211
	3	Effective date		6	19-17-106	79	1	37-51-302
56	1	69-3-2003		7	19-17-109		2	37-51-305
	2	Saving clause		8	19-17-108		3	37-51-308
	3	Effective date		9	19-17-110		4	37-51-309
	4	Applicability		10	19-17-111		5	37-51-602
57	1	17-7-502		11	19-17-112		6	Saving clause
	2	85-20-1504		12	19-17-113	80	1	61-8-904
	3	Effective date		13	19-17-201		2	61-9-416
58	1	30-10-1001		14	19-17-203	81	1	16-4-312
	2	30-10-1002		15	19-17-204	82	1	17-8-303
	3	30-10-1003		16	19-17-401		2	Effective date
	4	30-10-1004		17	19-17-403	83	1	76-4-104

	2	Effective date	29	19-7-301	6	46-23-202
	3	Applicability	30	19-7-302	7	46-23-210
84	1	82-4-235	31	19-7-1001	8	46-23-215
	2	Repealer	32	19-8-101	9	46-23-218
	3	Effective date	33	19-8-601	10	46-23-301
85	1	75-6-102	34	19-8-801	11	46-23-302
	2	75-6-103	35	19-8-1003	12	46-23-306
86	1	16-4-207	36	19-13-301	13	46-23-307
	2	16-3-316	37	19-13-1101	14	46-23-1025
	3	Codification instruction	38	19-21-214	15	Effective date
	4	Saving clause	39	Repealer	16	Implementation
	5	Effective date	40	Codification instruction		— staggered terms
87	1	41-5-206	41	Effective date	17	Retroactive applicability
	2	Saving clause	100	1 37-1-304		
88	1	76-2-305	2	37-1-305	103	1 61-12-314
	2	Effective date	3	37-1-307		2 Effective date
89	1	1-1-230	4	37-3-310	104	1 61-8-339
	2	Notification to tribal governments	5	37-4-101	105	1 60-1-217
	3	Codification instruction	6	37-4-511		2 Codification instruction
			7	37-6-302		3 Effective date
			8	37-31-305	106	1 23-2-824
			9	37-31-309		2 Codification instruction
90	1	7-2-4101	10	37-31-312		
91	1	5-5-223	11	37-47-202	107	1 15-6-203
	2	5-5-226	12	37-47-310		2 Effective date
	3	5-5-228	13	37-47-351		3 Retroactive applicability
	4	Effective date	14	37-51-204		
92	1	5-5-202	15	37-51-308	108	1 7-8-2304
	2	5-5-211	16	37-51-605		2 31-1-107
	3	Effective date	17	37-60-101		3 33-3-431
93	1	20-9-342	18	37-60-202		4 Effective date — applicability
	2	77-1-101	19	37-60-303	109	1 72-31-301
	3	Saving clause	20	37-67-306		2 72-31-302
	4	Effective date	21	37-67-312		3 72-31-303
94	1	75-2-111	22	37-67-313		4 72-31-305
	2	Effective date	23	50-76-113		5 72-31-306
95	1	41-5-2003	24	Repealer		6 72-31-307
	2	Effective date	101	1 13-13-201		7 72-31-308
96	1	85-2-306	2	13-13-204		8 72-31-309
97	1	85-2-306	3	13-13-212		9 72-31-310
98	1	39-51-201	4	13-13-213		10 72-31-316
99	1	2-4-110	5	13-13-222		11 72-31-317
	2	2-15-1009	6	13-13-241 (Voided and replaced by sec. 2, Ch. 331)		12 72-31-318
	3	17-6-203	7	13-13-245		13 72-31-319
	4	19-2-303	8	13-15-201		14 72-31-320
	5	19-2-403	9	13-19-102		15 72-31-321
	6	19-2-506	10	13-19-106		16 72-31-322
	7	19-2-603	11	13-19-205		17 72-31-323
	8	19-2-706	12	13-19-206		18 72-31-324
	9	19-2-715	13	13-19-207		19 72-31-325
	10	19-2-801	14	13-19-301		20 72-31-326
	11	19-2-802	15	13-19-303		21 72-31-327
	12	19-2-908	16	13-19-305		22 72-31-328
	13	19-3-108	17	13-19-306		23 72-31-336
	14	19-3-319	18	13-19-308		24 72-31-337
	15	19-3-401	19	13-19-309		25 72-3-917
	16	19-3-403	20	13-19-312		26 72-5-501
	17	19-3-412	21	13-19-313		27 72-5-502
	18	19-3-513	22	Repealer		28 72-31-222 (Renumbered 72-31-304)
	19	19-3-901	23	Codification instruction		
	20	19-3-906		Effective date	29	72-31-223 (Renumbered 72-31-338)
	21	19-3-1106	102	1 2-15-2302		
	22	19-3-1201		2 46-23-103	30	72-31-224 (Renumbered 72-31-339)
	23	19-3-1202		3 46-23-104		
	24	19-3-1203		4 46-23-109		
	25	19-3-1501		5 46-23-201		
	26	19-3-2114				
	27	19-3-2117				
	28	19-5-701				

31	72-31-225 (Renumbered 72-31-340)	3	Notification to tribal governments	127	1	61-3-332
32	72-31-226 (Renumbered 72-31-341)	4	Codification instruction	2	2	Coordination instruction
33	72-31-227 (Renumbered 72-31-342)	5	Saving clause	3	3	Effective date
34	72-31-228 (Renumbered 72-31-343)	6	Effective date	128	1	2-18-641
35	72-31-229 (Renumbered 72-31-344)	7	Applicability	2	2	2-18-702
36	72-31-230 (Renumbered 72-31-345)	116	Repealer	3	3	7-2-2213
37	72-31-231 (Renumbered 72-31-346)	1	Effective date	4	4	7-2-2218
38	72-31-232 (Renumbered 72-31-347)	2	Effective date	5	5	7-2-2222
39	72-31-233 (Renumbered 72-31-348)	117	61-3-332 (Voided by sec. 2, Ch. 127)	6	6	7-2-2225
40	72-31-234 (Renumbered 72-31-349)	1	Effective date	7	7	7-3-1214
41	72-31-235 (Renumbered 72-31-350)	2	Effective date	8	8	7-3-1306
42	72-31-236 (Renumbered 72-31-351)	118	87-5-208	9	9	7-3-1341
43	72-31-352	119	37-7-101	10	10	7-4-2405
44	72-31-353	2	37-7-105	11	11	7-4-2601
45	72-31-354	3	Codification instruction	12	12	7-4-2602
46	72-31-238 (Renumbered 72-31-365)	120	69-5-104(1)	13	13	7-4-2703
47	72-31-366	1	69-5-102	14	14	7-4-2705
48	72-31-367	2	69-8-411	15	15	7-4-3006
49	Repealer	3	Codification instruction	16	16	7-6-2102
50	Codification instruction	4	Effective date	17	17	7-6-2401
110	1 30-13-202	121	23-5-602	18	18	7-6-2413
2 35-1-310	2	1	23-5-603	19	19	7-21-3211
3 Effective date	3	2	23-5-607	20	20	7-22-2142
111	1 13-13-212	4	23-5-608	21	21	7-32-101
2 13-21-210	5	5	23-5-611	22	22	7-32-2102
3 Effective date	6	6	23-5-621	23	23	7-32-2111
112	1 85-2-301	122	Effective date	24	24	13-17-101
113	1 87-3-111 (Voided by sec. 123, Ch. 258)	1	37-2-316	25	25	15-23-703
2 87-3-118 (Voided by sec. 125, Ch. 258)	2	2	37-2-202	26	26	15-24-3001
3 Repealer	3	3	37-1-131	27	27	15-36-332
4 Effective date	4	4	37-3-203	28	28	15-39-110
114	1 Review of health care insurance — advisory council	5	37-3-401	29	29	30-14-122
2 Effective date	6	6	37-4-311	30	30	39-4-107
3 Termination	7	7	37-7-201	31	31	80-7-814 (Voided and replaced by sec. 12, Ch. 244)
115	1 69-3-2009	8	37-8-202	32	32	90-6-1001
2 69-3-2010	9	8	Repealer	33	33	Repealer
		10	Codification instruction	34	34	Effective date
		123	15-31-150	129	1	61-4-129
		1	39-51-201	130	1	46-13-110
		2	39-51-204	2	2	Repealer
		3	39-51-301	3	3	Effective date
		4	39-51-1212	131	1	61-10-104
		5	39-51-1214	132	1	7-5-2316
		6	39-51-2101			7-5-4316
		7	39-51-2111			20-6-630
		8	39-51-2302		2	60-2-118
		9	39-51-3206			Codification instruction
		10	53-20-221	133	1	33-22-1501
		11	53-20-222	2	2	33-22-1504
		12	39-51-3208	3	3	33-22-1512
		13	Notification to tribal governments	4	4	33-22-1521
		14	Codification instruction	5	5	Effective date
		15	37-3-203	134	1	87-1-513
		124	50-46-103	2	2	87-2-101 (Voided by sec. 122, Ch. 258)
		1	50-46-202	3	3	87-2-114
		2	Coordination instruction	4	4	87-2-807 (Voided by sec. 122, Ch. 258)
		3	Effective date	5	5	Saving clause
		4	Effective date	135	1	7-4-2636
		5	44-6-103	2	2	7-4-2637
		125	Applicability	136	1	61-8-903
		1	5-5-215	137	1	70-17-203
		2	5-11-210	2	2	76-3-509

	3	Effective date	5	20-7-705	4	39-71-225
138	1	32-1-429	6	20-9-115	5	39-71-315
	2	32-3-609	7	20-9-121	6	39-71-320
139	1	87-5-721	8	20-9-131	7	39-71-403
	2	Saving clause	9	20-9-134	8	39-71-407
140	1	15-30-2326	10	20-9-141	9	39-71-703
	2	15-31-135	11	20-9-142	10	39-71-704
	3	15-31-136	12	20-9-151	11	39-71-711
	4	20-26-603	13	20-9-152	12	39-71-721
	5	Notification to tribal governments	14	20-9-213	13	39-71-736
	6	Applicability	15	20-9-439	14	39-71-741
141	1	77-2-103	16	20-9-501	15	39-71-1011
	2	77-2-351	17	20-9-503	16	39-71-1041
142	1	61-10-141	18	20-9-506	17	39-71-1042
143	1	61-8-920	19	20-9-533	18	39-71-1043
	2	61-8-903	20	20-9-534	19	39-71-1049
	3	61-8-904	21	20-9-604	20	39-71-1050
	4	61-8-908	22	20-10-144	21	39-71-1051
	5	Codification instruction	23	20-10-146	22	39-71-1025
144	1	85-1-211	24	20-10-147	23	39-71-1031
	2	Effective date	25	20-15-313	24	39-71-1101
145	1	82-4-335	26	Repealer	25	39-71-1102
	2	Effective date	27	Effective date	26	39-71-1106
146	1	2-7-506	153	10-3-1203	27	39-71-2361
147	1	85-20-1511	2	10-3-1216	28	39-71-1036
	2	17-7-502	154	19-8-101	29	39-71-717
	3	85-20-1505	2	Effective date	30	Transition for stay-at-work/return-to-work assistance fund
	4	Notification to tribal governments	155	19-7-101		
	5	Codification instruction	2	Effective date		
	6	Severability	156	44-12-102	31	Codification instruction
	7	Two-thirds vote required	2	45-9-101	32	Saving clause
	8	Effective date	3	45-9-102	33	Severability — nonseverability
148	1	18-7-302	4	45-9-110	34	Effective date
	2	18-7-306	5	50-31-306	35	Applicability — retroactive applicability
	3	Repealer	6	50-31-310	168	7-33-2116
149	1	61-5-231	7	50-32-222	2	Codification instruction
	2	61-2-302	8	Effective date	169	7-33-4107
	3	61-5-205	157	23-2-657	2	7-33-4108
	4	61-5-208	2	Codification instruction	170	2-6-203
	5	61-8-734	3	Effective date	2	2-15-1013 (Renumbered 2-6-208)
	6	Codification instruction	4	Effective date	3	Directions to code commissioner
	7	Applicability	5	Effective date	171	20-7-702
150	1	39-71-107	160	50-74-218	2	20-7-712
	2	39-71-418	2	50-74-307	172	3-10-116
	3	39-71-2215	161	7-5-131	173	33-22-114
	4	Effective date	1	76-15-301	2	33-31-102
151	1	19-20-208	2	76-15-311	3	37-8-202
	2	19-20-402	3	76-15-312	4	Effective date
	3	19-20-403	4	Effective date	174	87-1-301
	4	19-20-404	162	Effective date	2	Effective date
	5	19-20-408	163	33-20-1112	175	80-4-402
	6	19-20-410	2	Codification instruction	2	80-4-405
	7	19-20-416	3	Effective date	3	80-4-421
	8	19-20-427	4	Effective date	4	80-4-502
	9	19-20-715	164	85-7-2013	5	80-4-505
	10	19-20-731	2	85-7-2014	6	80-4-506
	11	19-20-802	3	85-7-2016	7	80-4-601
	12	Effective date	4	85-7-2032	8	80-4-604
152	1	7-6-4036	5	Effective date	9	Effective date
	2	15-10-305	165	1-1-525	176	46-23-201
	3	20-3-205	166	60-2-240	177	7-2-4101
	4	20-3-209	2	Codification instruction		
			167	39-71-105		
			2	39-71-116		
			3	39-71-118		

	2	Contingent voidness	194	1	26-1-805	5	61-1-101 (Amended by sec. 11, Ch. 247)
	3	Effective date	195	2	45-9-104	6	61-3-201
178	1	87-1-214	195	2	Effective date	7	61-3-301
	2	Codification instruction	196	1	75-10-112	8	61-3-312
	3	Effective date	197	1	15-15-101	9	61-3-321
179	1	37-47-302	198	1	7-35-4102	10	61-3-332
	2	37-47-304	199	1	20-25-1401	11	61-5-102
	3	Effective date		2	20-25-1403	12	61-6-158
180	1	7-14-2142		3	20-25-1404	13	61-9-220
	2	7-14-2407		4	33-1-102	14	61-9-432
	3	60-2-141		5	Codification instruction	15	Codification instruction
	4	Codification instruction	200	1	39-71-401	16	Effective date
181	1	61-5-111		2	39-71-417	17	Grandfather clause
182	1	13-1-210		3	Effective date	210	61-10-102
	2	13-2-110	201	1	49-2-101	211	1-1-215
	3	13-13-212		2	49-3-201	2	20-5-321
	4	13-21-210		3	Effective date	3	20-5-502
	5	Codification instruction	202	1	20-25-455	4	20-5-503
183	1	87-2-522		2	20-25-456	5	20-7-420
	2	Effective date		3	20-25-426	6	Effective date
184	1	82-11-138		4	Codification instruction	212	39-4-103
	2	Codification instruction		5	Effective date	2	39-4-104
	3	Effective date		6	Applicability	3	39-4-107
185	1	18-4-402	203	1	3-2-101 (Not codified — referendum)	4	39-4-109
	2	Effective date		2	3-2-102 (Not codified — referendum)	213	75-6-107
186	1	7-2-4601		3	Supreme court districts defined — number of judges	2	Effective date
	2	7-2-4606		4	Transition	214	7-13-2263
	3	7-2-4608		5	Codification instruction	1	7-3-4302
	4	7-2-4705		6	Severability	2	7-13-2225
	5	7-2-4731		7	Effective date	3	7-13-2262
	6	7-2-4732		8	Applicability	4	7-13-2272
	7	7-2-4734		9	Submission to electorate	5	7-13-2273
	8	7-2-4741		10	Effective date	6	7-13-2282
	9	Effective date		11	Repealer	7	7-13-4312
187	1	22-3-422		12	Codification instruction	8	69-3-101
	2	22-3-423		13	Severability	9	76-3-103
	3	22-3-424		14	Effective date	10	Repealer
188	1	Repealer		15	Applicability	11	Codification instruction
	2	Effective date		16	Submission to electorate	12	Saving clause
189	1	75-11-307	204	1	61-8-310	13	Severability
	2	75-11-309	205	1	49-2-203	14	Applicability
	3	75-11-503		2	49-2-303	215	7-4-2631
	4	75-11-505		3	49-2-305	216	35-12-502
	5	75-11-508		4	49-2-403	1	35-12-504
	6	Codification instruction		5	49-2-504	2	35-12-511
	7	Effective date		6	Effective date	3	35-12-505
190	1	13-13-205		7	2-6-110	4	35-12-506
	2	13-21-201	206	1	15-1-103	5	35-12-508
	3	13-21-210		2	Effective dates	6	35-12-509
	4	Effective date		3	Retroactive applicability	7	35-12-512
191	1	23-1-128		4	61-5-105	8	35-12-513
192	1	13-25-301	207	1	61-12-501	9	35-12-514
	2	13-25-302		2	61-12-502	10	35-12-515
	3	13-25-303		3	61-12-504	11	35-12-510
	4	13-25-304		4	Repealer	12	Dual capacity (Not codified — identical to 35-12-510)
	5	13-25-305		5	50-50-103	13	35-12-516
	6	13-25-306	208	1	50-50-202	14	35-12-601
	7	13-25-307		2	Effective date	15	35-12-602
	8	13-25-308		3	61-8-378	16	35-12-603
	9	13-25-309	209	1	61-5-122	17	35-12-604
	10	Repealer		2	10-3-1307	18	35-12-605
	11	Codification instruction		3	23-1-105	19	35-12-605
193	1	20-1-303		4		20	35-12-614

2	1-6-105	28	13-12-207	12	Coordination instruction
3	25-4-203	29	13-13-111	13	Effective date
4	72-1-206	30	13-13-112	245	1 90-1-181
5	72-1-310	31	13-13-113	2	90-1-182
6	72-1-311	32	13-13-114	3	Codification instruction
7	72-1-312	33	13-13-116	246	1 61-5-125
8	72-3-109	34	13-13-118	247	1 61-8-391
9	72-3-401	35	13-13-119	2	10-3-1307
10	Codification instruction	36	13-13-201	3	23-1-105
11	Saving clause	37	13-13-211	4	61-1-101 (Voided by sec. 11, Ch. 247)
239	1 33-16-201	38	13-13-212	5	61-3-312
2	33-18-210	39	13-13-214	6	61-3-321
240	1 90-4-605	40	13-13-222	7	61-3-332
2	90-4-612	41	13-13-225	8	61-6-158
3	90-4-614	42	13-13-241	9	61-12-101
4	90-4-625	43	13-13-301	10	Codification instruction
5	Codification instruction	44	13-13-602	11	Coordination instruction
6	Effective date	45	13-14-115	12	Effective date
241	1 37-7-1501	46	13-14-117	248	1 69-5-121
2	37-7-101	47	13-14-118	2	69-5-122
3	37-7-1502	48	13-14-212	3	Codification instruction
4	37-7-1503	49	13-15-101	4	Effective date
5	37-7-1504	50	13-15-107	5	Applicability
6	37-7-1505	51	13-15-108	249	1 70-17-401
7	37-7-1506	52	13-15-112	2	70-17-402
8	37-7-1507	53	13-15-205	3	70-17-403
9	37-7-1508	54	13-15-206	4	70-17-404
10	37-7-1509	55	13-15-402	5	70-17-405
11	37-7-1510	56	13-15-404	6	70-17-406
12	37-7-1511	57	13-15-506	7	70-17-407
13	37-7-1512	58	13-16-201	8	70-17-408
14	37-7-1513	59	13-16-412	9	70-17-203
15	37-7-1514	60	13-16-419	10	Repealer
16	Notification to tribal governments	61	13-17-203	11	Notification to tribal governments
17	Codification instruction	62	13-17-503	12	Codification instruction
18	Severability	63	13-19-102	13	Saving clause
19	Effective date	64	13-19-106	14	Severability
20	Termination	65	13-19-206	15	Effective date
242	1 5-2-406	66	13-19-301	250	1 87-1-111 (Voided by sec. 129, Ch. 258)
2	13-1-106	67	13-19-306	2	87-1-115 (Voided by sec. 130, Ch. 258)
3	13-1-108	68	13-19-307	3	87-3-102 (Voided by sec. 124, Ch. 258)
4	13-1-303	69	13-19-308	4	87-3-506 (Voided by sec. 128, Ch. 258)
5	13-1-304	70	13-19-309	5	Saving clause
6	13-2-108	71	13-19-310	251	1 2-18-501
7	13-2-110	72	13-19-311	2	Effective date
8	13-2-112	73	13-19-313	252	1 76-3-610
9	13-2-115	74	13-25-101	2	Applicability
10	13-2-122	75	13-38-201	253	1 17-5-107
11	13-2-220	76	Repealer	2	7-7-2212
12	13-2-222	77	Effective date	3	7-7-2238
13	13-2-304	243	1 77-3-322	4	7-7-2251
14	13-2-511	2	77-3-323	5	7-7-2252
15	13-2-512	3	Codification instruction		
16	13-3-105	4	Saving clause		
17	13-4-102	5	Effective date		
18	13-4-207	244	1 7-4-2711		
19	13-10-201	2	7-22-2103		
20	13-10-203	3	7-22-2109		
21	13-10-209	4	7-22-2116		
22	13-10-211	5	7-22-2120		
23	13-10-325	6	7-22-2121		
24	13-10-404	7	7-22-2126		
25	13-10-405	8	7-22-2141		
26	13-12-202	9	7-22-2142		
27	13-12-203	10	7-22-2153		
		11	80-7-814 (Voided and replaced by sec. 12, Ch. 244)		

6	7-7-2254	11	87-6-205	68	87-6-906
7	7-7-4211		(Replaced by sec. 124, Ch. 258)		(Replaced by sec. 129, Ch. 258)
8	7-7-4236	12	87-6-206	69	87-6-907
9	7-7-4251		(Replaced by sec. 125, Ch. 258)		(Replaced by sec. 130, Ch. 258)
10	7-7-4252	13	Unlawful sale of grizzly bear	70	87-6-908
11	7-7-4254		(Voided by sec. 126, Ch. 258)	71	87-6-914
12	7-7-4433	14	87-6-207	72	87-6-915
13	7-7-4434	15	87-6-214	73	87-6-916
14	7-10-220	16	87-6-215	74	87-6-917
15	7-10-221	17	87-6-216	75	87-6-918
16	7-12-2172	18	87-6-217	76	87-6-919
17	7-12-4204	19	87-6-218	77	87-6-920
18	7-14-4652	20	87-6-219	78	87-6-921
19	7-15-4507	21	87-6-220	79	87-6-922
20	7-31-113	22	87-6-301	80	87-6-923
21	20-9-429		(Replaced by sec. 3, Ch. 316)	81	87-4-529
22	20-9-430	23	87-6-302	82	45-6-101
23	20-9-431	24	87-6-303	83	45-6-203
24	20-9-432	25	87-6-304	84	81-2-121
25	85-7-1436	26	87-6-305	85	87-1-120
26	85-7-1437	27	87-6-306	86	87-1-232
27	85-7-2022	28	87-6-310	87	87-1-234
28	85-7-2023	29	87-6-311	88	87-1-601
29	85-7-2033	30	87-6-312	89	87-1-803
30	85-8-503	31	87-6-313	90	87-1-804
31	85-9-625	32	87-6-314	91	87-2-101
32	Codification instruction	33	87-6-401	92	87-2-104
33	Severability	34	87-6-402	93	87-2-106
34	Effective date	35	87-6-403	94	87-2-202
35	Applicability	36	87-6-404	95	87-2-411
254	1 87-1-301		(Replaced by sec. 127, Ch. 258)	96	87-2-521
2	87-1-303	37	87-6-405	97	87-2-807
3	Severability	38	87-6-406	98	87-3-110
4	Effective date	39	87-6-410	99	87-3-121
255	1 7-6-621	40	87-6-411	100	87-3-126
2	7-33-2109	41	87-6-412	101	87-3-204
3	7-33-2209	42	87-6-413	102	87-3-221
4	7-33-2403	43	87-6-414	103	87-3-222
5	7-33-4109	44	87-6-415	104	87-3-224
6	7-33-4111	45	87-6-501	105	87-3-403
7	7-34-102	46	87-6-601	106	87-4-201
8	39-71-118	47	87-6-602	107	87-4-306
9	39-71-123	48	87-6-603	108	87-4-407
10	Effective date		(Replaced by sec. 128, Ch. 258)	109	87-4-427
256	1 Legislative findings	49	87-6-701	110	87-4-601
2	Interim study	50	87-6-702	111	87-4-609
3	Limit on rulemaking authority	51	87-6-703	112	87-4-803
4	Appropriation	52	87-6-704	113	87-4-807
5	Effective dates	53	87-6-705	114	87-4-903
6	Termination	54	87-6-706	115	87-4-915
257	1 75-10-722	55	87-6-707	116	87-4-1002
2	Effective date	56	87-6-713	117	87-5-204
258	1 87-6-101	57	87-6-714	118	87-5-703
	(Replaced by sec. 122, Ch. 258)	58	87-6-715	119	87-5-721
2	87-6-102	59	87-6-716	120	Repealer
3	87-6-103	60	87-6-717	121	Codification instruction
4	87-6-104	61	87-6-718	122	Coordination instruction
5	87-6-105	62	87-6-801	123	Coordination instruction
6	87-6-106	63	87-6-901	124	Coordination instruction
7	87-6-201	64	87-6-902	125	Coordination instruction
8	87-6-202	65	87-6-903	126	Coordination instruction
	(Replaced by sec. 123, Ch. 258)	66	87-6-904		
9	87-6-203	67	87-6-905		
10	87-6-204				

	127	Coordination instruction	8	37-54-506	3	61-8-402
			9	37-54-507	4	61-8-404
	128	Coordination instruction	10	37-54-508	5	61-8-409
			11	37-54-509	6	61-8-714
	129	Coordination instruction	12	37-54-510	7	61-8-722
			13	37-54-511	8	61-8-731
	130	Coordination instruction	14	37-54-512	9	61-8-734
			15	37-54-513	10	Codification instruction
	131	Saving clause	16	37-54-514		
	132	Severability	17	37-54-515	11	Coordination instruction
259	1	70-17-211	18	37-54-516		
	2	70-17-212	19	37-54-517	12	Effective date
	3	70-17-203	20	37-54-518	13	Applicability — retroactive applicability
	4	Codification instruction	21	37-54-519		
			22	Codification instruction	283	1 46-5-224
	5	Effective date			2	61-8-402
	6	Applicability	271	1 20-3-305	3	61-8-404
260	1	80-5-601	2	20-3-307	4	61-8-405
	2	80-5-602	3	20-3-313	5	61-8-409
	3	80-5-603	4	20-3-321	6	Effective date
	4	80-5-604	5	20-9-406	7	Applicability
	5	80-5-605	6	20-9-426	284	1 3-10-301
	6	80-5-606	7	20-9-427	2	3-10-1004
	7	Codification instruction	8	20-9-428	3	3-11-103
			9	Effective date	4	7-1-4151
	8	Severability	272	1 87-3-124 (Voided by sec. 127, Ch. 258)	5	25-35-502
	9	Effective date			6	25-35-503
261	1	15-1-402	2	Effective date	7	25-35-606
	2	15-1-409	273	1 19-21-203	8	75-7-123
	3	20-9-366	2	Coordination instruction	9	Effective date
	4	Effective dates			285	1 72-34-441
	5	Applicability	3	Effective date	2	72-34-452
262	1	39-71-118	274	1 45-8-221	3	Transitional matters
	2	Effective date	2	Codification instruction	4	Effective date
263	1	69-3-809			286	1 2-10-111
	2	Effective date	275	1 85-1-501	2	2-10-112
264	1	82-11-183	2	Effective date	3	Severability
	2	Contingent effective date	276	1 15-1-210	4	Codification instruction
265	1	7-11-1027	2	Codification instruction	287	1 53-4-209
266	1	2-16-501	277	1 16-1-401	2	Notification to tribal governments
	2	7-4-2106	2	16-1-404	3	Effective date
	3	Effective date	3	16-3-214	288	1 15-6-230(1)-(5)
267	1	75-5-103	4	16-4-311	2	15-6-230(6)
	2	75-5-105	278	1 15-6-201	3	Existing tax liens not extinguished
	3	75-5-313	2	41-3-201	4	Notification to tribal governments
	4	75-5-314	3	61-3-321	5	Codification instruction
	5	Codification instruction	4	61-10-214	289	1 2-7-503
			5	Notification to tribal governments	2	2-7-517
	6	Saving clause			3	Effective date
	7	Severability			4	Applicability
268	1	13-38-201			290	1 33-18-224
269	1	15-30-2504	6	Applicability	2	Effective date
	2	15-30-2512	279	1 Creation of mural to honor women	291	1 37-2-401
	3	15-30-2604	2	2-17-808	2	37-2-402
	4	15-30-3302	3	Contingent voidness	3	37-2-403
	5	15-31-101			4	37-2-404
	6	15-31-111			5	37-2-409
	7	15-31-141	280	1 61-9-420	6	37-2-410
	8	15-31-502	2	61-9-423	7	Codification instruction
	9	Effective date	3	61-13-103		
	10	Retroactive applicability	4	Effective date		
270	1	37-54-102	281	1 Time limits		
	2	37-54-105	2	Appropriations — authorization to expend money		
	3	37-54-501				
	4	37-54-502				
	5	37-54-503	3	Effective date		
	6	37-54-504	282	1 61-8-465		
	7	37-54-505	2	61-8-101		

292	8	Effective date	4	Notice of parent required	312	1	Transfer of funds to guarantee account
	1	87-1-304					
	2	87-2-701	5	Alternative notification		2	Transfer of funds to general fund
	3	87-5-301					
	4	87-5-302	6	Exceptions		3	Transfer of funds to health and medicaid initiative account
	5	Effective date	7	Coercion prohibited			
293	1	7-12-2103	8	Procedure for judicial waiver of notice		4	15-35-108
	2	7-12-2105				5	39-71-2352 (Line-item vetoed)
	3	7-12-2151	10	41-1-405 (Not codified — referendum)		6	52-3-115
	4	7-12-4104				7	53-19-310
	5	7-12-4106	11	47-1-104 (Not codified — referendum)		8	75-10-532
	6	7-12-4161	12	Repealer		9	75-10-743
	7	7-12-4162	13	Codification instruction		10	76-13-150
	8	Effective date	14	Coordination instruction		11	76-15-904
	9	Applicability	15	Effective date		12	82-11-135
294	1	23-4-101	16	Submission to electorate		13	Old fund liability account
	2	23-4-105	308	1 Certain state services denied to illegal aliens		14	Old fund premium fee — assessment
	3	23-4-201				15	Appropriation
	4	23-4-202	2	Codification instruction		16	Codification instruction
	5	Effective date	3	Coordination instruction		17	Coordination instruction
295	1	2-16-117	4	Severability		18	Severability
	2	Effective date	5	Effective date		19	Effective dates — applicability
296	1	61-5-141	6	Applicability	313	20	Termination
	2	61-1-101	7	Submission to the electorate		1	Appropriations from school facility and technology account — grants for school facility projects
	3	61-5-112	309	1 15-6-137		2	Appropriations from school facility and technology account — emergency grants
	4	61-5-221 (Renumbered 61-5-147)	2	15-6-141		3	Appropriations from school facility and technology account — planning grants
	5	61-8-102	3	15-6-156		4	Approval of grants — completion of biennial appropriation
	6	61-8-801	4	15-6-157		5	Notification to tribal governments
	7	61-8-803	5	75-20-104		6	Effective date
	8	61-8-812	6	75-20-201		1	33-18-605
	9	61-11-102	7	Applicability		2	Effective date
	10	61-11-105	310	1 Short title		1	39-2-206
	11	Codification instruction	2	Health insurance purchase mandate prohibited — exceptions		2	39-2-210
	12	Direction to code commissioner	3	Codification instruction		3	39-2-313
	13	Effective dates	4	Effective date		4	39-71-407
297	1	75-5-1107	5	Submission to electorate		5	50-46-201
	2	75-6-212	311	1 Tax credits based on surplus fund balance — property tax — income tax		6	50-46-205
	3	Effective date					
298	1	87-1-271					
	2	87-2-903					
	3	Effective date					
299	1	27-30-101					
300	1	2-15-1525					
	2	20-25-229					
	3	80-5-126					
	4	80-5-128					
	5	80-5-139					
	6	Codification instruction					
	7	Effective date					
301	1	7-2-4736					
	2	7-13-4107					
	3	Effective date					
302	1	75-5-703					
303	1	80-7-404					
	2	Effective date					
304	1	13-10-201					
305	1	7-33-2205					
	2	Effective date					
306	1	7-6-202					
	2	Effective date					
307	1	Short title					
	2	Legislative purpose and findings					
	3	Definitions					

	7	Coordination instructions	321	3	7-22-2148	16	53-21-1331
	8	Effective date		1	69-3-113	17	53-21-1332
316	1	87-2-103 (Voided by sec. 2, Ch. 316)		2	75-20-113	18	53-21-1333
	2	Coordination instruction (Enacts 87-2-311)		3	Codification instruction	19	53-21-1334
	3	Coordination instruction		4	Contingent voidness	20	53-21-1335
	4	Effective date		5	Effective date	21	72-5-402
317	1	31-1-202	322	6	Retroactive applicability	22	Repealer
	2	32-5-102	323	1	35-1-534	23	Codification instruction
	3	32-7-103		2	Repealer	330	37-1-142
	4	32-9-101		3	Appropriation	2	Codification instruction
	5	32-9-102		4	Coordination instruction	3	Effective date
	6	32-9-103	324	5	Effective dates	4	Termination
	7	32-9-104		1	16-11-119	331	13-13-241 (Voided and replaced by sec. 2, Ch. 331)
	8	32-9-104		2	Definitions	2	Coordination instruction
	9	32-9-105		3	Planning and design	332	77-3-305
	10	32-9-106		4	Capital project — contingent funds	2	77-3-312
	11	32-9-107		5	Capital project appropriations	3	77-3-313
	12	32-9-112		6	Legislative consent and intent	4	77-3-314
	13	32-9-113		7	Contingency — termination and transfer to the general fund	5	77-3-316
	14	32-9-116		8	Coordination instruction	6	Reporting requirements
	15	32-9-117		9	Effective date	7	requirements
	16	32-9-118		1	77-1-130	8	Effective date
	17	32-9-120		2	Sec. 5, Ch. 461, L. 1997	333	Applicability
	18	32-9-121		3	Sec. 6, Ch. 270, L. 2001	1	2-4-307
	19	32-9-122		4	Sec. 2, Ch. 57, L. 2005	2	Applicability
	20	32-9-123		5	Sec. 3, Ch. 57, L. 2005	334	50-51-101
	21	32-9-166		6	Sec. 4, Ch. 57, L. 2005	2	50-51-102
	22	32-9-167		7	Termination	3	50-51-103
	23	32-9-124		8	23-1-105	4	50-51-201
	24	32-9-168	325	9	61-3-321	5	50-51-401
	25	32-9-169		1	Effective date	335	3-1-1001
	26	32-9-125		2	53-10-203	2	3-1-1010
	27	32-9-126		3	2-15-1773	3	3-7-221
	28	32-9-128		4	37-47-201	4	3-7-222
	29	32-9-129		5	37-47-316	5	3-7-225
	30	32-9-130		6	37-47-318	6	3-7-223
	31	32-9-133		7	Repealer	7	3-7-224
	32	32-9-145		8	53-21-1301	8	19-5-301
	33	32-9-148		9	53-21-1302	9	Appropriation
	34	32-9-170		10	53-21-1303	10	Codification instruction
	35	32-9-150		1	53-21-1304	11	Effective date
	36	32-9-151	326	2	53-21-1305	1	87-2-511
	37	32-9-160		3	53-21-1311	2	Effective date
	38	Repealer		4	53-21-1312	336	20-7-334
	39	Codification instruction	327	5	53-21-1313	337	90-3-1003
318	1	44-4-1201	328	6	53-21-1314	2	Severability
	2	44-4-1202		7	53-21-1315	3	Effective date
	3	44-4-1203		8	53-21-1321	338	Commissioner review — cancer clinical trials
	4	44-4-1204		9	53-21-1322	1	review by interim committee
	5	44-4-1205	329	10	53-21-1323	2	Cancer clinical trials — review by interim committee
	6	44-4-1206		11	53-21-1324	3	Consumer information — coverage of routine patient care for cancer patients participating in cancer clinical trials
	7	45-7-309		12	53-21-1325	4	Termination
	8	46-18-201		13			
	9	61-5-208		14			
	10	Codification instruction		15			
	11	Saving clause					
	12	Severability					
319	1	15-65-121					
	2	15-65-131					
	3	Effective date					
	4	Applicability					
320	1	7-22-2123					
	2	7-22-2124					

339	5	Effective date	18	15-10-420	2	15-1-216 (Voided by sec. 3, Ch. 353)
	1	81-1-112	19	Codification instruction	3	Coordination instruction
	2	81-7-106	348	1 39-11-103	4	Effective date
	3	2-15-3110		2 39-11-202	5	Applicability
	4	2-15-3114		3 Repealer	354	1 10-1-1501
	5	15-1-122		4 Effective date	2	10-1-1502
	6	15-24-925	349	1 90-6-601	3	10-1-1503
	7	17-7-502		2 90-6-602	4	10-1-1504
	8	81-1-110		3 90-6-603	5	10-1-1505
	9	81-7-103		4 90-6-604	6	10-1-1506
	10	81-7-104		5 90-6-605	7	10-1-1511
	11	Codification instruction		6 17-6-201	8	10-1-1512
	12	Effective date		7 17-6-308	9	10-1-1513
	13	Termination		8 Codification instruction	10	10-1-1514
340	1	15-30-2522		9 Effective date	11	10-1-1515
	2	Effective date	350	1 2-9-211	12	10-1-1516
341	1	80-7-106		2 33-2-301	13	10-1-1517
	2	80-7-108		3 33-2-318	14	Codification instruction
	3	Effective date		4 33-2-319	355	1 35-8-912
342	1	37-15-102		5 33-2-302	2	35-8-912
	2	37-15-103		6 33-2-303	3	Coordination instruction
	3	37-16-103		7 33-2-305	4	Effective dates
	4	37-16-401		8 33-2-307	5	Termination
	5	37-16-405		9 33-2-310	356	1 15-7-101
343	1	41-3-425		10 33-2-311	2	15-7-102
344	1	2-15-1028		11 33-2-312	3	15-7-103
	2	46-8-101		12 33-2-313	4	15-7-139
	3	46-8-113		13 33-2-316	5	15-7-201
	4	46-8-114		14 33-2-317	6	15-44-103
	5	47-1-102		15 33-2-321	7	Saving clause
	6	47-1-105		16 33-2-322	8	Severability
	7	47-1-111		17 33-2-323	357	1 50-50-102
	8	47-1-202		18 Codification instruction	2	50-51-102
	9	47-1-205		19 Severability	3	Effective date
	10	47-1-215		20 Effective date	358	1 22-3-115
	11	47-1-216		21 Applicability	2	15-65-121
	12	47-1-118		351	3	Codification instruction
	13	Codification instruction		1 53-6-710	4	Effective date
	14	Effective date		2 53-6-711	359	1 77-1-1109
345	1	16-2-211		3 33-1-102	2	77-1-1110
	2	Codification instruction		4 33-31-115	3	77-1-1111
	3	Nonseverability		5 53-6-116	4	77-1-1112
	4	Effective date		6 53-6-702 (Voided and replaced by sec. 4, Ch. 346)	5	77-1-1113
346	1	33-31-102		7 53-6-704	6	77-1-1114
	2	33-31-201		8 53-6-705	7	77-1-1115
	3	53-6-702 (Voided and replaced by sec. 4, Ch. 346)		9 53-6-707	8	77-1-1116
	4	Coordination instruction		10 53-21-701	9	77-1-1117
	1	7-2-2801		11 Repealer	10	77-1-121
347	2	7-2-2802		12 Codification instruction	11	77-1-134
	3	7-2-2803		13 Effective date	12	77-2-101
	4	7-2-2804		14 Retroactive applicability	13	Notification to tribal governments
	5	7-2-2805	352	1 26-1-1101	14	Codification instruction
	6	7-2-2806		2 26-1-1102	15	Severability
	7	7-2-2807		3 26-1-1103	360	1 85-2-125
	8	7-2-2808		4 26-1-1104	2	Effective date
	9	7-2-2809		5 26-1-1105	3	Applicability
	10	7-2-103		6 26-1-1106	361	1 53-4-210
	11	7-2-2201		7 26-1-1107	2	Notification to tribal governments
	12	7-2-2202		8 26-1-1108	3	Effective date
	13	7-2-2411		9 Codification instruction	362	1 77-1-228
	14	7-2-2412		353	1	15-1-206 (Voided by sec. 3, Ch. 353)
	15	7-4-2631				
	16	7-4-2632				
	17	7-4-2637				

2	77-1-229	5	Reduction of	2	80-7-1003
3	77-1-220		grants on pro rata	3	80-7-1005
4	Codification		basis	4	80-7-1006
	instruction	6	Effective date	5	80-7-1007
5	Effective date	368	1 Sec. 14, Ch. 3,	6	80-7-1008
6	Retroactive		Special L. May	7	80-7-1011
	applicability		2007	8	Appropriations
364	1 Time limits	2	Sec. 16, Ch. 3,		from state
2	Appropriations		Special L. May		general fund
3	Effective date		2007	9	Effective date
365	1 Appropriations	3	Sec. 2, Ch. 435, L.	379	1 15-1-205
	from natural		2009	2	5-4-104
	resources projects	4	Fund transfer	3	Codification
	state special	5	Effective date		instruction
	revenue account	369	1 19-3-108	4	Effective date
2	Conditions of	2	19-3-315	380	1 Select committee
	grants	3	19-3-513		on efficiency in
3	Appropriations	4	19-3-901		government —
	established	5	19-3-902		membership
4	Review of	6	19-3-904	2	Committee duties
	previously	7	19-3-906		— evaluation of
	authorized grants	8	19-3-1002		priority budgeting
5	Notification to	9	19-3-1008		systems —
	tribal	10	19-3-1106		reporting
	governments	11	19-3-1205	3	Appropriation
6	Severability	12	19-3-2117	4	Effective dates
7	Effective date	13	19-3-2141	5	Termination
366	1 Projects not	14	19-21-214	381	1 15-1-216
	completing	15	Effective date	2	15-30-2604
	requirements —	370	1 87-1-201	3	Applicability
	projects	2	87-1-301	382	1 75-20-104
	reauthorized	3	87-1-303	2	75-20-301
2	Coal severance	4	87-1-304	3	75-20-303
	tax bonds	5	87-3-301	4	Effective date
	authorized	371	1 17-3-1003	5	Applicability
3	Conditions of	2	20-9-516	383	1 87-1-216
	loans	3	77-1-102	2	Severability
4	Private and	4	77-1-103	3	Effective date
	discount purchase	5	77-4-208	384	1 45-8-317
	of loans	6	Sec. 32, Ch. 486,	2	45-8-328
5	Appropriations		L. 2009	3	45-8-351
	established	7	Effective date	385	1 90-4-1001
6	Creation of state	372	1 13-27-202	2	Effective date
	debt —	2	13-27-204	386	1 2-2-121
	appropriation of	3	13-27-205	2	2-2-136
	coal severance tax	4	13-27-206	3	17-2-304
	— bonding	5	13-27-207	387	1 Definitions
	provisions	6	13-27-312	2	Capital projects
7	Notification to	7	13-27-315		appropriations
	tribal	8	13-27-501		and
	governments	9	Effective date		authorizations
8	Severability	373	1 15-8-111	3	Capital
9	Effective date	2	70-23-102		improvements
367	1 Appropriation of	3	70-23-301	4	Land acquisition
	cultural and	4	76-3-203		appropriation
	aesthetic grant	5	70-23-103	5	Environmental
	funds — priority	6	Effective date		cleanup
	of disbursement	7	Applicability		appropriation
2	Appropriation of	374	1 7-15-4214	6	Legislative
	cultural and	2	7-15-4215		branch
	aesthetic grant	3	7-15-4237		information
	funds	375	1 7-15-4210		technology capital
3	Contingent	376	1 7-15-4211		projects
	appropriation of	2	7-15-4221		appropriation
	additional grant	3	7-15-4237	7	Transfer of
	money	4	7-15-4282		appropriations
4	Reversion of	377	1 52-2-308	8	Planning and
	grant money	2	52-2-310		design
		3	52-2-311		
		378	1 80-7-1002		

9	Capital projects — contingent funds	7	Appropriations from treasure state endowment	8	Effective date
10	Review by department of environmental quality		state special	9	Termination
11	Fund transfer	8	revenue account for infrastructure planning grants	395	1 87-1-622
12	Legislative consent			2	87-1-201
13	17-7-205			3	87-1-621
14	Sec. 2, Ch. 3, Sp. L. May 2007			4	Codification instruction
15	Sec. 2, Ch. 478, L. 2009	9	Appropriation from treasure state endowment	5	Coordination instruction
16	Sec. 6, Ch. 478, L. 2009		regional water	6	Effective date
17	Severability	10	system special	396	1 75-1-102
18	Effective date		revenue account	2	75-1-201 (Voided and replaced by secs. 6, 7, Ch. 396)
388	1 Appropriations for reclamation and development grants	11	Approval of funds — completion of appropriation	3	75-1-203
	2 Approved grants and projects	12	Conditions — manner of	4	75-1-208
	3 Termination of previous project — appropriation	13	disbursement of funds	5	75-1-220
	4 Coordination of fund sources for grants program projects	14	Fund transfers	6	Coordination instruction
	5 Conditions of grants	15	17-5-703	7	Coordination instruction
	6 Other	16	90-6-703	8	Severability
	7 appropriations	17	90-6-710	9	Effective dates
	8 Notification to tribal	18	Sec. 6, Ch. 495, L. 1999	10	Applicability
	9 governments	19	Sec. 1, Ch. 70, L. 2001	11	Termination — contingency
389	1 Effective date	390	Repealer	397	1 53-6-124
	2 Appropriations from treasure state endowment state special revenue account	1	Notification to tribal	2	53-6-125
	3 Contingent appropriation from treasure state endowment state special revenue account	2	governments	3	Repealer
	4 Approval of grants — completion of biennial appropriation	3	Effective date	4	Effective date
	5 Conditions of grants — disbursement of funds	4	87-1-601	5	Retroactive applicability
	6 Other powers and duties of department	5	87-2-523	398	1 82-4-207
	7 Appropriations from treasure state endowment state special revenue account for emergency grants	6	87-2-524	2	75-5-103
		7	87-2-524	3	82-4-203
		8	87-5-132	4	Notification to tribal
		9	87-1-623		governments
		10	Transfer of funds	5	Codification instruction
		11	Codification instruction	6	Saving clause
		12	Severability	7	Severability
		13	Effective date	399	1 15-7-102
		14	87-1-301	2	15-7-307
		15	87-2-115	3	15-8-111
		16	Codification instruction	4	15-8-601
		17	Effective date	5	Effective date
		18	37-8-102	400	1 87-5-132
		19	37-8-422	2	87-1-625
		20	37-8-423	3	Appropriation
		21	37-8-424	4	Codification instruction
		22	37-8-425		Effective date
		23	37-8-426	401	1 77-1-235
		24	Codification instruction	2	77-1-236
		25	15-1-121	3	77-1-208
		26	15-10-420	4	77-2-318
		27	Saving clause	5	Repealer
		28	Effective date	6	Codification instruction
		29	Applicability		Effective date
		30	17-7-102	7	Effective date
		31	47-1-201	402	1 2-1-501
		32	17-7-162	2	Codification instruction
		33	75-11-521		Instruction
		34	Codification instruction	403	1 81-5-121
		35	Severability	2	81-1-101
		36	Coordination instruction	3	81-2-120
		37	Severability	4	81-2-121
		38	Coordination instruction	5	81-3-201

6	81-4-603	14	Coordination instruction	27	Coordination instruction
7	81-5-101				
8	81-5-104	15	Saving clause	28	Effective dates — applicability
9	87-1-216	16	Effective date		
10	Notification to tribal governments	17	Applicability	29	Termination
		18	Termination	1	50-46-301
11	Codification instruction	412	1 16-4-1001	2	50-46-302
			2 16-4-1002	3	50-46-303
12	Name change — directions to code commissioner		3 16-4-1003	4	50-46-307
			4 16-4-1004	5	50-46-308
13	Effective date		5 16-4-1005	6	50-46-309
404	1 18-11-121		6 16-4-1006	7	50-46-310
	2 Notification to tribal governments		7 16-4-1007	8	50-46-317
			8 16-4-1008	9	50-46-318
	3 Codification instruction		9 16-4-1009	10	50-46-319
405	1 15-24-3201		10 Notification to tribal governments	11	50-46-320
	2 15-24-3202	413	1 77-1-117	12	50-46-327
	3 15-24-3203		2 Effective date	13	50-46-328
	4 15-24-3204		3 Applicability	14	50-46-329
	5 15-24-3211	414	1 87-1-217	15	50-46-330
	6 Codification instruction		2 Effective date	16	50-46-331
		415	1 87-1-290	17	50-46-332
	7 Effective date		2 87-2-514	18	50-46-339
	8 Applicability		3 87-2-515	19	50-46-340
406	1 15-23-703		4 Effective date	20	50-46-341
	2 15-23-715	416	1 87-5-301	21	50-46-342
	3 Effective date		2 Effective date	22	50-46-343
	4 Retroactive applicability	417	1 81-1-102	23	50-46-344
407	1 82-4-226		2 81-8-901	24	37-1-316
	2 Effective date		3 81-8-902	25	37-3-343
	3 Applicability	418	4 Effective date	26	37-3-347
408	1 82-4-203		1 15-36-332	27	41-5-216
	2 Effective date — contingency		2 20-3-363	28	45-9-203
409	1 76-3-608		3 20-7-103	29	46-18-202
410	1 82-4-303		4 20-7-104	30	50-46-201
	2 82-4-305		5 20-7-102	31	50-46-202
	3 82-4-335		6 20-7-1201	32	61-11-101
	4 82-4-337		7 20-9-104	33	Emergency rulemaking
	5 82-4-342		8 20-9-310	34	Repealer
	6 82-4-353		9 20-9-517	35	Transition
411	1 15-1-121		10 20-9-518	36	Codification instruction
	2 15-6-138		11 20-9-161	37	Coordination instruction
	3 15-1-123 (Amended by sec. 14, Ch. 411)		12 20-9-201	38	Instructions to code commissioner
	4 15-6-141		13 20-9-204	39	Severability
	5 15-10-420		14 20-9-208	40	Effective dates
	6 15-23-101		15 20-9-306 (Voided and replaced by sec. 26, Ch. 418)		
	7 17-7-502 (Voided by sec. 14, Ch. 411)		16 20-9-308		
	8 20-9-501		17 20-9-353		
	9 20-9-630 (Voided and replaced by sec. 13, Ch. 411)		18 20-9-507		
			19 20-9-516		
			20 20-9-630 (Voided and replaced by sec. 13, Ch. 411)		
			21 20-10-147		
			22 20-9-323		
			23 Appropriation		
			24 Notification to tribal governments		
			25 Codification instruction		
			26 Coordination instruction		

2010 BALLOT ISSUES TO CODE

Constitutional Initiative

<u>CI</u>	<u>Sec.</u>	<u>MCA</u>
105	1	Art. VIII, sec. 17, Mont. Const.
	2	Retroactive applicability
	3	Severability
	4	Effective date

Initiative

<u>Init.</u>	<u>Sec.</u>	<u>MCA</u>
161	1	87-1-242
	2	87-1-266
	3	87-1-601
	4	87-2-202
	5	87-2-505
	6	87-2-510
	7	87-2-511
	8	87-2-512
	9	87-1-290
	10	Repealer
	11	Codification instruction
	12	Effective date
162	1	Findings
	2	31-1-112
	3	31-1-203
	4	31-1-241
	5	31-1-401
	6	31-1-722
	7	31-1-817
	8	32-5-301
	9	Effective date

INDEX TO APPROPRIATIONS

ADMINISTRATION DEPARTMENT.

Health care and benefits, Ch 281.

Montana lottery, Ch 281.

AQUATIC INVASIVE SPECIES.

Detection and control, Ch 378.

ARTS COUNCIL.

Cultural and aesthetic grants, Ch 367.

BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION
ACCOUNT.

Statutory appropriation for, Chs 57, 147.

CAPITAL PROJECTS APPROPRIATIONS, Ch 387.

COAL SEVERANCE TAXES.

Bonds.

Renewable resource projects, financing, Ch 366.

COMMERCE DEPARTMENT.

Treasure state endowment funds and accounts.

Appropriations to department, Ch 389.

COMMISSIONER OF POLITICAL PRACTICES.

Hearing and legal costs, Ch 281.

CULTURAL AND AESTHETIC GRANTS, Ch 367.

EMERGENCY MEDICAL SERVICE PROVIDERS GRANT PROGRAM, Ch
323.

FIRE HAZARD REDUCTION FUND, Ch 61.

FISCAL YEAR 2011 APPROPRIATIONS, Ch 364.

FISH AND WILDLIFE.

Aquatic invasive species.

Detection and control, Ch 378.

GENERAL APPROPRIATIONS ACT OF 2011, Ch 363.

INFORMATION TECHNOLOGY APPROPRIATIONS.

Reductions, Ch 368.

JUDGES.

Associate water judges, Ch 335.

LEGISLATURE.

Operational costs, Ch 1.

Select committee on efficiency in government, Ch 380.

LIVESTOCK.

Livestock loss reduction and mitigation restricted account, Ch 339.

Index to Appropriations

LIVESTOCK (Continued)

Predatory animal state special revenue account, Ch 339.

MINES AND MINING.

Reclamation and development grants, Ch 388.

NATURAL RESOURCES AND CONSERVATION DEPARTMENT.

Reclamation and development grants, Ch 388.

Renewable resource grant and loan program, Ch 365.

Treasure state endowment funds and accounts.

Appropriations to department, Ch 389.

PUBLIC DEFENDER OFFICE.

Death penalty cases, Ch 281.

Public defender, Ch 281.

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM, Ch 365.

RENEWABLE RESOURCE PROJECTS.

Reauthorization, Ch 366.

SCHOOLS AND EDUCATION.

Adult basic education.

Organizations administering programs, Ch 171.

Office of public instruction.

Pupil transportation, Ch 281.

State tuition payments, Ch 281.

School facility and technology account.

Appropriations for various grants, Ch 313.

Superintendent of public instruction, Ch 418.

SECURITIES RESTITUTION ASSISTANCE FUND, Ch 58.

SOUTHWESTERN MONTANA VETERANS' HOME.

Capital project financing, Ch 324.

TAXATION.

Entitlement share payments, Chs 393, 411.

VETERANS.

Southwestern Montana veterans' home.

Capital project financing, Ch 324.

WATER RIGHTS.

Associate water judges, Ch 335.

WELLS.

Permitting for water wells.

Exemptions, study regarding, Ch 256.

GENERAL INDEX

- A -

ABORTION.

Parental notice of abortion, Ch 307.

ABSENTEE VOTING.

See ELECTIONS.

ACCOUNTABLE CARE ORGANIZATIONS.

Waiver of health maintenance organization requirements, Ch 346.

ACUPUNCTURE.

Medical examiners board.

Acupuncturist as member, Ch 18.

ADDICTION COUNSELORS.

Accredited colleges or universities, definition, Ch 72.

ADMINISTRATION DEPARTMENT.

Appropriation for, Ch 281.

Government entity audits and reports, filing with department, Ch 289.

ADMINISTRATIVE RULEMAKING.

Adoption of material by reference.

Model code, rule or other publication, Ch 333.

Agency private property assessments, Ch 286.

Electronic notice of proposed rulemaking, Ch 41.

Primary sponsors, contacting.

Use of legislator contact information, Ch 53.

ADVANCE MEDICAL DIRECTIVES.

Mental health care advance directive, Ch 329.

ADVANCING AGRICULTURAL EDUCATION IN MONTANA.

Program account, Ch 337.

AGGRAVATED DUI, Ch 282.

AGRICULTURAL COMMODITIES.

Legislative study of bonding requirements, SJR 15.

AIR POLLUTION.

Confirmation of appointment to advisory council, SR 8.

AIR QUALITY.

Forestry equipment, regulation, Ch 94.

ALCOHOLIC BEVERAGES.

Agency liquor stores.

Sales to licensees, Ch 28.

Flavors and nonbeverage ingredients containing alcohol.

Importation by brewery, tax exemption, Ch 277.

Growlers, sale of beer in, for off-premises consumption, Ch 77.

Liquor license applications.

Protests by residents in adjoining counties, Ch 86.

Microdistilleries.

Sales for off-premises consumption, Ch 81.

Nonprofit or tax-exempt organizations.

Fundraising auction or raffle of alcoholic beverages, Ch 86.

General Index

ALCOHOLIC BEVERAGES (Continued)

State liquor markup.

Reduction, depending on percentage of Montana-produced ingredients,
Ch 345.

Training of persons selling or serving.

Responsible alcohol sales and service act, Ch 412.

ALIENS.

Denial of state services to illegal aliens, Ch 308.

ALL-TERRAIN VEHICLES.

Operation on public roads, Ch 106.

Operation on state parks and fishing access sites, Ch 191.

AMBULANCES.

Private air ambulance services.

Membership subscriptions, Ch 237.

Workers' compensation.

Public safety volunteers, Ch 255.

AQUATIC INVASIVE SPECIES.

Detection and control, Ch 378.

ARCHITECTS.

Appointment to board, SR 25.

ARTS COUNCIL.

Cultural and aesthetic grants, Ch 367.

ASSUMED BUSINESS NAME REGISTRATION.

Contest of, Ch 110.

ATTORNEYS AT LAW.

Child abuse and neglect cases.

Appointment of counsel, Ch 343.

Public defender assignment for misdemeanor cases.

Incarceration not to be exercised as sentencing option, Ch 344.

AUDIOLOGISTS.

Not subject to licensure as hearing aid dispenser, Ch 342.

- B -

BACKGROUND CHECKS.

Legislative auditor.

Background checks of prospective employees, Ch 234.

BANKS AND BANKING.

Banking board.

Confirmation of appointments, SR 26.

Branch banking within state, Ch 49.

Debt cancellation or suspension programs, Ch 138.

Records of holding companies and affiliated entities, Ch 49.

BEEF PROMOTION AND MARKETING.

Collection of beef check-off, Ch 417.

General Index

BINGO.

Sessions, Ch 66.

BISON.

Management plan.

Communication between department of livestock and private landowners, SJR 14.

Wild buffalo and wild bison.

Permit and inspection system for transportation of bison, Ch 403.

Regulation by department of fish, wildlife and parks, Ch 383.

BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT.

Bond issues for water-related infrastructure project, Ch 147.

Statutory appropriation for, Ch 57.

BLIND AND VISUALLY IMPAIRED.

School for deaf and blind.

Exemption from vacancy savings, Ch 394.

BLUE ALERT PROGRAM.

Death or serious injury of peace officer.

Program to assist in capturing persons responsible, Ch 159.

BOARDS AND COMMISSIONS.

Confirmation of appointments, SR 3 to 18, 20 to 27, 29.

Official published reports, information about members to be included, Ch 236.

BOILERS AND PRESSURE VESSELS.

Safe working pressure for historical boiler, Ch 160.

Traction engineer's license, Ch 160.

BOND ISSUES.

Application of bond validating act, Ch 8.

Public or private sale of local government bonds, Ch 253.

School districts.

Construction bonds, security for.

Maturity date time limit, Ch 306.

Energy conservation measures, financing, Ch 25.

BRIDGES.

Construction projects.

Montana-made wooden materials to be used, Ch 180.

BUDGETS.

Base budget, defined, Ch 394.

BUFFALO.

Wild buffalo.

Hunting with bows and arrows and other hunting arms, Ch 221.

Regulation by department of fish, wildlife and parks, Ch 383.

- C -

CABIN SITE LEASES OR LICENSES, Ch 401.

General Index

- CANCER CLINICAL TRIALS.
Equitable treatment of eligible patients, Ch 338.
- CAPITAL COMPANIES.
Repeal of act, Ch 9.
- CAPITAL PROJECTS APPROPRIATIONS, Ch 387.
- CAPITOL COMPLEX.
Carrying concealed weapons.
State capitol, legislative security officers, Ch 384.
East wing, first floor naming for Francis Bardanouve, Ch 50.
Mural to honor women as community builders, Ch 279.
- CAPTIVE INSURERS, Chs 75, 227.
- CAPTIVE RISK RETENTION GROUPS, Ch 227.
- CARBON DIOXIDE.
Injection wells.
Certificate of completion, Ch 264.
- CARRYING CONCEALED WEAPONS.
State capitol, legislative security officers, Ch 384.
- CATARACT CREEK DAM.
Department disposition of project, Ch 144.
- CEMETERIES.
Unsuitable for interment of bodies, use of cemetery grounds, Ch 198.
- CHARTER SERVICES.
Public service commission.
Regulation of motor carriers, exemption, Ch 218.
- CHECKS.
Bad check collection fees, Ch 48.
- CHIEF APPELLATE DEFENDER.
Public defender commission supervision of, Ch 24.
- CHILD ABUSE AND NEGLECT.
Appointment of counsel, Ch 343.
Childhood trauma and traumatic stress study, SJR 30.
Jurisdiction and venue, children removed from state, Ch 223.
Mandatory reporters of suspected abuse, Ch 223.
Protective services.
Contact or sharing of information with family members, Ch 11.
Show cause and adjudication hearing process, Ch 223.
- CHILDHOOD HUNGER.
Study by legislative committee, HJR 8.
- CHILDREN'S SERVICES.
Multiagency services.
Out-of-state placement monitoring, Ch 377.
Qualified provider pools, Ch 377.
- CHILD SAFETY RESTRAINT SYSTEMS, Ch 280.
- CITIES AND TOWNS.
Annexation, Ch 186.

General Index

CITIES AND TOWNS (Continued)

- Audit of local government entity by independent auditor, Ch 146.
- Bonds, public or private sale, Ch 253.
- Budget and financing, deadlines, Ch 152.
- Hazardous materials incident response.
 - State recovery of costs, Ch 153.
- Petition to organize.
 - Postal service requirements, Ch 177.
- Proposed organization.
 - Land used for certain purposes, consent of owner required, Ch 90.
- Solid waste management.
 - Local government powers and duties, Ch 196.
 - Municipal garbage and solid waste services generally, Ch 301.
- Taxation.
 - Business equipment tax rate reduction reimbursement, Ch 116.
 - Entitlement share payments, Chs 393, 411.

CITY COURTS OF RECORD, Ch 38.

- Civil jurisdiction, Ch 284.

CLEAN INDOOR AIR ACT.

- Smoking.
 - Medical marijuana included in definition of, Ch 7.

COAL GROSS PROCEEDS TAX.

- Abatement of tax, Ch 406.

COAL SEVERANCE TAXES.

- Bonds.
 - Renewable resource projects, financing, Ch 366.
- Credits to general fund, Ch 312.
- Trust funds, Ch 389.

CODE OF THE WEST.

- Model code of conduct, SR 31.

COMMERCE DEPARTMENT.

- Director.
 - Confirmation of appointment, SR 19.
 - Infrastructure projects, Ch 389.
 - Socioeconomic advocacy and assistance, Ch 245.
 - Treasure state endowment funds and accounts.
 - Appropriations to department, Ch 389.

COMMERCIAL DRIVERS' LICENSES, Ch 296.

COMMISSIONER OF POLITICAL PRACTICES.

- Appropriation for, Ch 281.

COMMODITY DEALERS AND WAREHOUSE OPERATORS.

- Financial responsibility.
 - Equity and working capital requirements, Ch 175.

CONDOMINIUMS.

- Municipal zoning.
 - Condominium unit counted individually as part of protest, Ch 88.

- CONSERVATION DISTRICTS.
 - Supervisors, Ch 162.
- CORPORATE LICENSE TAXES.
 - University or college foundations and endowment funds, contributions to.
 - Credit, Ch 140.
- CORPORATIONS.
 - Assumed business name registration, contest of, Ch 110.
 - Business mailing address, Ch 26.
 - Liability of shareholders, Ch 322.
 - University or college foundations and endowment funds, contributions to.
 - Tax credit, Ch 140.
- CORRECTIONS DEPARTMENT.
 - Interim monitoring, SJR 26.
 - Powers regarding community corrections programs, Ch 21.
- COSMETOLOGY AND RELATED PROFESSIONS.
 - Booth rental license, Ch 100.
 - License to teach, Ch 100.
 - Temporary permits, Ch 100.
- COUNTIES.
 - Alteration of county boundaries for public safety purposes, Ch 347.
 - Audit of local government entity by independent auditor, Ch 146.
 - Board of county commissioners.
 - Resigning member participation in filling of vacancy, Ch 266.
 - Bonds, public or private sale, Ch 253.
 - Budget and financing, deadlines, Ch 152.
 - Classifications eliminated.
 - Replaced with taxable valuation or population, Ch 128.
 - Hazardous materials incident response.
 - State recovery of costs, Ch 153.
 - Highway or bridge construction.
 - Montana-made wooden materials to be used, Ch 180.
 - Solid waste management.
 - Local government powers and duties, Ch 196.
 - Taxation.
 - Business equipment tax rate reduction reimbursement, Ch 116.
 - County tax appeal board.
 - Number of members, Ch 197.
 - Entitlement share payments, Chs 393, 411.
- COUNTY CLERK AND RECORDER.
 - Mines and mining.
 - Location and labor regarding mining claims, Ch 215.
 - Standards for recorded documents, Ch 135.
 - Exemption for acknowledgment by notary, Ch 45.
- COWBOY HALL OF FAME, Ch 165.
- CRANE AND HOIST ENGINEERS.
 - Licensing, Ch 100.

General Index

CREDIT REPORTS.

Security freeze requested by parent, guardian or conservator, Ch 42.

CREDIT UNIONS.

Debt cancellation or suspension programs, Ch 138.

CRIME VICTIMS COMPENSATION.

Domestic violence occurring in home with minor child present, Ch 32.

CRIMINAL MISCHIEF DAMAGE TO RENTAL PROPERTY, Ch 220.

CRIMINAL PROCEDURE.

Prior crimes evidence, notice of intent to introduce.

Repeal of provisions, Ch 130.

CULTURAL AND AESTHETIC GRANTS, Ch 367.

- D -

DAVID DELAITTRE MEMORIAL HIGHWAY, Ch 219.

DEAD BODIES.

Military personnel.

Disposition of remains by use of defense department form, Ch 158.

DEAF AND HARD OF HEARING.

Interpreter in criminal proceeding.

Compensation of interpreter, Ch 30.

School for deaf and blind.

Exemption from vacancy savings, Ch 394.

DECEDENTS' ESTATES.

Acknowledgment of fiduciary relationship and obligations, Ch 238.

Nonprobate transfers, beneficiary deed.

Statement that person with interest in property is deceased, Ch 76.

Oaths or affirmations, Ch 238.

Supervised administration, presumptive entitlement, Ch 238.

Unsworn declarations, Ch 238.

Verification of pleadings, Ch 238.

DENTISTRY.

Medical assistance programs, Ch 122.

Use of sedation and anesthesia, Ch 100.

DETENTION CENTERS.

Mental health diversion grants.

Based on admissions to state hospital, Ch 232.

DISCRIMINATION.

General revisions of human rights laws, Ch 205.

Independent contractors.

Definition of employee under human rights laws, Ch 201.

DISTRICT COURTS.

Dismissal of civil action for failure to prosecute, Ch 17.

Youth found guilty of offense arising during crime for which district court may sentence.

Authority to sentence, Ch 87.

DRIVERS' LICENSES.

- Aliens, lawful presence verification.
 - Federal verification program to be used, Ch 207.
- Commercial drivers' licenses, Ch 296.
- Hardship licenses for students 14 and over to operate motor vehicle to or from a bus stop, Ch 246.
- Probationary license, Ch 149.
- Residence of licensee used as address unless otherwise requested, Ch 181.
- Suspension or revocation, Ch 149.

DRIVING UNDER THE INFLUENCE.

- Aggravated DUI, Ch 282.
- Blood and breath testing, Ch 283.
- Driver rehabilitation and improvement program, Ch 149.
- DUI court authority, Ch 149.
- DUI court participation, Ch 226.
- Montana 24/7 sobriety program act, Ch 318.
- Penalty for driving with excessive alcohol concentration, Ch 225.
- Suspension of sentence, Ch 226.

DRUGS AND CONTROLLED SUBSTANCES.

- Fraudulently obtaining dangerous drugs, Ch 194.
- Marijuana act, Ch 419.
- Salvia as dangerous drug, Ch 156.
- Synthetic marijuana as dangerous drug, Ch 156.

DRUG TESTING AT WORKPLACE.

- Medical marijuana, use of.
 - Rights of employers, Ch 315.

- E -

ELECTIONS.

- Absentee voting.
 - Annual absentee ballot list, Ch 111.
 - Ballots and transmission of ballots generally, Ch 101.
 - Counting of ballots, Ch 101.
 - Early preparation of ballots, security and secrecy protection rules, Ch 331.
 - Military and overseas voters.
 - Implementation of federal provisions, Ch 190.
 - Notice to elector of questions, Ch 101.
 - Replacement ballots, Ch 101.
 - Standard application form for ballot requests, Ch 182.
 - Voting procedures generally, Ch 242.
- Candidates.
 - Nomination and withdrawal procedures, Ch 242.
 - Party precinct committee representatives, Ch 268.
 - Reports, place of filing, Ch 6.
- Election judges, Ch 242.
- Mail voting.
 - Absence from place of residence, Ch 101.

General Index

ELECTIONS (Continued)

Mail voting (Continued)

- Disposition and counting of returned ballots, Ch 101.

- Distribution of materials to electors, Ch 101.

- Notice to elector of questions, Ch 101.

- Replacement ballots, Ch 101.

- Return of marked ballots, Ch 101.

- Signature envelope, Ch 101.

- Written plan for conduct of election, Ch 101.

Military and overseas voters.

- Implementation of federal provisions, Ch 190.

- Notice of special elections, Ch 242.

- Party precinct committee representatives, Ch 268.

- Recount procedures, Ch 242.

Term-limited offices.

- Clarification of term of office, Ch 304.

- Uniform faithful presidential electors act, Ch 192.

- Vacancies in senate, filling, Ch 242.

Voter registration.

- Processing and retention of voter records, Ch 242.

- Standard application form, Ch 182.

ELECTRICITY BUYING COOPERATIVES.

- Membership, Ch 20.

- Repeal of provisions, Ch 67.

ELECTRICITY SUPPLY SERVICE.

- Provision in territory of another utility, Ch 120.

ELK.

- Class B-10 big game licenses.

- Nonresident elk and deer license preference point system, Ch 391.

- Special elk permit drawing unsuccessful.

- Purchase of portion of class B-10 license, Ch 336.

EMERGENCY MEDICAL SERVICE PROVIDERS GRANT PROGRAM, Ch 323.

EMERGENCY MEDICAL TECHNICIANS.

- Legislative study of fire protection and emergency services entities, including benefits, HJR 38.

- Workers' compensation.

- Public safety volunteers, Ch 255.

EMINENT DOMAIN.

- Public utilities, powers, Ch 321.

EMPLOYMENT RELATIONS.

- Deposit of wages into wage collection fund, Ch 12.

- General revisions of human rights laws, Ch 205.

- Independent contractors.

- Exclusion from definition of employee, Ch 12.

- Outside sales person, definition updated, Ch 12.

- Primary sector business workforce training grants.

- Eligibility of new jobs created, Ch 348.

EMPLOYMENT RELATIONS (Continued)

Workers' compensation.
See WORKERS' COMPENSATION.

ENERGY.

Energy storage facilities, classification for property tax purposes, Ch 309.
Renewable energy credit reports, Ch 115.
State building energy conservation program.
Debt service account, Ch 240.
Funding of projects from bond proceeds, Ch 240.
State energy policy development, Ch 43.
Goal statements, additions, Ch 385.
Wind energy rights act, Ch 249.

ENGINEERS.

Licensing, Ch 100.

ENVIRONMENTAL PROTECTION.

Department of environmental quality.
Interim monitoring, SJR 26.
Department of fish, wildlife and parks.
Environmental review compliance.
Snowmobile area operator exception, Ch 157.
Environmental impact reviews and statements, Ch 396.
Greenhouse gases.
Use of existing federal laws to regulate, SJR 10.
Remediation costs.
Interest and penalties on overdue amounts, Ch 257.
Water quality.
See WATER QUALITY.

ENVIRONMENTAL REVIEW BOARD.

Confirmation of appointment, SR 9 to 12.

EXTRADITION.

Expenses for returning fugitives, Ch 39.

- F -

FACILITY SITING.

Designation of 1-mile wide corridor for environmental review, Ch 382.
Transmission reliability criteria.
Determination of necessity, Ch 382.

FATHER'S DAY.

Free fishing weekend without license, Ch 316.

FEDERAL BUDGET.

Urging Congress for Constitutional amendment regarding balanced federal budget, SJR 4.

FEDERAL LAND USE DECISION PROCESS.

Resolution regarding, SJR 6.

General Index

FIREARMS AND OTHER WEAPONS.

Carrying concealed weapons.

State capitol, legislative security officers, Ch 384.

Fish, wildlife and parks department and commission.

Regulation of firearms, accessories and ammunition, Ch 370.

FIREFIGHTERS AND FIRE DEPARTMENTS.

Legislative study of fire protection and emergency services entities, including benefits, HJR 38.

Meals, expenses for.

Firefighters involved in wildfire suppression, Ch 251.

Qualifications of firefighters, Ch 169.

Rural firefighters injured in performance of duty.

Payment of partial salary, Ch 168.

Volunteer firefighters compensation act, Ch 64.

Pension benefit amount, Ch 195.

Workers' compensation.

Volunteer firefighters and other public safety volunteers, Ch 255.

FIRE HAZARD REDUCTION AGREEMENTS.

Open burning without permit, Ch 305.

FIRE HAZARD REDUCTION FUND, Ch 61.**FIRE SUPPRESSION ACCOUNT.**

Subject to legislative funds transfer, Ch 312.

FISCAL YEAR 2011 APPROPRIATIONS, Ch 364.**FISH AND WILDLIFE.**

Antelope licenses.

Persons with life-threatening illnesses, Ch 68.

Aquatic invasive species.

Detection and control, Ch 378.

Big game combination licenses.

Class B13--nonresident youth, removal of limitation, Ch 183.

Class B-10 big game licenses.

Nonresident elk and deer license preference point system, Ch 391.

Special elk permit drawing unsuccessful.

Purchase of portion of class B-10 license, Ch 336.

Commission - fish, wildlife and parks.

Appointment of commissioner, SR 14, 15.

Drawings for licenses and permits.

Squaring of points purchased by applicant per species, Ch 174.

Firearms, accessories and ammunition, department regulation of, Ch 370.

Criminal statutes, reorganization and recodification, Ch 258.

Department of fish, wildlife and parks.

Disclosure of identity of person lawfully taking large predator, Ch 178.

Environmental review compliance.

Snowmobile area operator exception, Ch 157.

Firearms, accessories and ammunition, department regulation of, Ch 370.

FISH AND WILDLIFE (Continued)

Department of fish, wildlife and parks (Continued)

Interim monitoring, SJR 26.

Wild buffalo or wild bison, regulation, Ch 383.

Dogs, using to track wounded game animals, Ch 272.

Father's Day.

Free fishing weekend without license, Ch 316.

Gray wolf, support of legislation to remove from endangered species lists, HJR 1.

Grizzly bears.

Commission regulations, Ch 292.

Federal law requirements for sale, Ch 113.

Management to avoid conflict with humans and livestock, Ch 416.

Importation, introduction and transplantation of fish, unlawful.

Penalties, Ch 139.

Large predator management.

Consultation and coordination with state and federal agencies, Ch 414.

Lottery of hunting licenses.

Commission payable to license agents, Ch 298.

Nonresident elk and deer license preference point system, Ch 391.

Nonresident relatives of residents, licenses for, Ch 415.

Raptors.

Nonresidents capturing raptors within state, Ch 118.

Violations, Ch 134.

Waste of certain wildlife, penalties, Ch 250.

Wild buffalo or wild bison.

Hunting with bows and arrows and other hunting arms, Ch 221.

Permit and inspection system for transportation of bison, Ch 403.

Regulation by department, Ch 383.

Wolf management account, Ch 390.

Wolf management funding, Ch 400.

FLOODS, FLOOD PLAINS AND FLOODWAYS.

Obstructions or nonconforming uses, Ch 23.

FOOD ESTABLISHMENTS.

Baked goods sold by nonprofit organization for charitable community purposes.

Exemptions from regulations, Ch 208.

Guest ranches serving day visitors, Ch 357.

FOREST MANAGEMENT.

Sustainable yield study.

Forest management plan and account, Ch 395.

FOREST PRODUCTS INDUSTRY WEEK, HJR 6.

FORT BELKNAP-MONTANA COMPACT.

Peoples Creek minimum flow account, Ch 47.

FUNERAL INSURANCE.

Initial policy limit, Ch 52.

General Index

- G -

GAMBLING.

- Bingo.
 - Sessions, Ch 66.
- Video gambling machines.
 - Ticket vouchers, Ch 66.
- Video line games, Ch 121.

GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM.

- Benefits, Ch 99.
- Highest average compensation, calculating, Ch 154.

GENERAL APPROPRIATIONS ACT OF 2011, Ch 363.

GOLF CARTS.

- Low-speed electric vehicles, Ch 209.
- Operation on public streets or highways, Ch 247.

GRAY WATER SYSTEMS.

- Tax abatement, Ch 405.

GREENHOUSE GASES.

- Use of existing federal laws to regulate, SJR 10.

GRIZZLY BEARS.

- Commission regulations on hunting, Ch 292.
- Federal law requirements for sale, Ch 113.
- Management to avoid conflict with humans and livestock, Ch 416.

GUEST RANCHES.

- Day visitors, Ch 357.
- Small and seasonal establishments.
 - Health standards, guidelines for, Ch 334.

- H -

HAIL INSURANCE BOARD.

- Confirmation of appointments, SR 27.

HAZARDOUS SUBSTANCES AND WASTE.

- Hazardous materials incident response.
 - State recovery of costs, Ch 153.

HEALTH INSURANCE.

- Accountable care organizations.
 - Waiver of health maintenance organization requirements, Ch 346.
- Cancer clinical trials.
 - Equitable treatment of eligible patients, Ch 338.
- Comprehensive health association and plan, Ch 133.
- Exchange, legislative study regarding, HJR 33.
- Mandating purchase of health insurance coverage.
 - Prohibited, Ch 310.
 - State agencies not to implement federal mandate, Ch 402.
- Medicaid managed care contracts.
 - Review of requests for proposals and proposed contracts, Ch 351.

HEALTH INSURANCE (Continued)

- Nurses, coverage for services provided by, Ch 173.
- Small business health insurance purchasing pool and tax credit program, Ch 227.
- Study of statewide all-payer all-claims database, Ch 114.
- Tax credit for premiums paid, Ch 227.
- University system.
 - Self-insured student health plan, Ch 199.

HEARING AID DISPENSERS.

- Audiologists selling or fitting hearing aids.
 - Not subject to licensure as hearing aid dispenser, Ch 342.

HIGHWAYS.

- Construction projects.
 - Bid to list bidder's special fuel user's permit number, Ch 132.
 - Montana-made wooden materials to be used, Ch 180.
 - Use of postconsumer recycled materials, Ch 166.
- Highway patrol officer David DeLaittre memorial highway, Ch 219.
- Highway patrol officer Michael W. Haynes memorial highway, Ch 105.
- Pintler veterans' memorial scenic highway, Ch 222.

HISTORICAL INTERPRETATION SPECIAL REVENUE ACCOUNT, Ch 358.

HISTORIC RIGHT OF WAY ON STATE LANDS, Ch 325.

HOLIDAYS AND OBSERVANCES.

- Forest products industry week, HJR 6.
- Montanans with developmental disabilities week, HJR 5.
- Welcome Home Vietnam Veterans Day, Ch 89.

HORSE RACING.

- Simulcast racing, requirements, Ch 294.

HUMAN REMAINS.

- Military personnel.
 - Disposition of remains by use of defense department form, Ch 158.

- I -

IDENTIFICATION CARDS.

- Aliens, lawful presence verification.
 - Federal verification program to be used, Ch 207.

ILLEGAL ALIENS.

- Denial of state services to illegal aliens, Ch 308.

INCOME TAXES.

- Due date for return, Ch 269.
- Extended returns.
 - Payment of entire amount without interest or penalty, conditions, Ch 381.
- Legislative study of income tax laws, HJR 13.
- Penalty assessments on delinquent taxes, Ch 353.

General Index

INCOME TAXES (Continued)

- Surplus government fund balance tax credit, Ch 311.
- University or college foundations and endowment funds, contributions to.
Credit, Ch 140.

INDIAN TRIBES.

- Disaster and emergency services to tribes, Ch 228.
- Property tax exemption, Ch 278.
 - Federal trust application pending, temporary exemption, Ch 288.
- Public employees' retirement system.
 - Irrigation project, separate entity managing or operating.
 - Participation in retirement system, Ch 404.
- Tribal family assistance plans.
 - Temporary assistance to needy families, use of portion of funds, Ch 361.

INFLUENZA VACCINE.

- Pharmacists and pharmacies.
 - Influenza vaccine administration, Ch 119.

INFORMATION TECHNOLOGY APPROPRIATIONS.

- Reductions, Ch 368.

INITIATIVE AND REFERENDUM.

- Ballot to contain yes and no statements, Ch 372.
- Restrictions on power of initiative.
 - Enforcement of state law by local government, Ch 161.

INSURANCE.

- Captive insurers, Chs 75, 227.
- Captive risk retention groups, Ch 227.
- Confidential documents maintained by insurance commissioner, Ch 227.
- Conversion of policy on termination of eligibility, Ch 227.
- Credit information, use of, Ch 227.
- Credit ratings used to underwrite or rate risks.
 - Military service overseas considered extraordinary event, Ch 314.
- Excess deposits of insurers, Ch 227.
- Farm mutual insurers, directors, Ch 227.
- Funeral insurance.
 - Initial policy limit, Ch 52.
- Motor vehicle liability insurance.
 - Designation of auto repair business, prohibitions, Ch 290.
 - Special risk classifications for private passenger automobile policies, Ch 239.
 - Verification system, delay of implementation, Ch 73.
- Public officers and employees, group benefit plan.
 - Mandated benefits, Ch 54.
- Risk-based capital reporting, Ch 227.
- Surplus lines insurance, general revisions, Ch 350.
- University system, group benefit plan.
 - Mandated benefits, Ch 54.

INTELLECTUAL PROPERTY.

- Plant sampling, Ch 260.

INTEREST ON MONEY.

Source for interest rates based on prime rate, Ch 108.

INTERPRETERS.

Deaf person, interpreter for in criminal proceeding.

Compensation of interpreter, Ch 30.

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION.

DNA testing, Ch 125.

IRRIGATION DISTRICTS.

Bond issuance procedure, Ch 164.

- J -

JUDGES.

Associate water judges, Ch 335.

Confirmation of appointments.

Chief water judge C. Bruce Loble, SR 2.

Twelfth judicial district, SR 30.

Interim monitoring of judicial branch and department of justice, SJR 26.

Supreme court justices, election, Ch 203.

JUSTICE'S COURTS.

Civil jurisdiction, Ch 284.

Judge pro tempore, Ch 172.

- L -

LANDSCAPE ARCHITECTS.

Appointment to board, SR 25.

LAND SURVEYORS.

Reciprocal licensing, Ch 100.

LEGISLATIVE AUDITOR.

Background checks of prospective employees, Ch 234.

LEGISLATURE.

Administrative rulemaking.

Primary sponsors, contacting.

Use of legislator contact information, Ch 53.

Agricultural commodities.

Study of bonding requirements, SJR 15.

Appropriations.

Operational costs, Ch 1.

Centrally assessed property, study of, SJR 17.

Childhood hunger study, HJR 8.

Childhood trauma and traumatic stress study, SJR 30.

Economic affairs interim committee.

State compensation insurance fund included, Ch 91.

Fire protection and emergency services entities.

Study of services and benefits, HJR 38.

LEGISLATURE (Continued)

- Health care workforce needs study, SJR 18.
- Health insurance exchange, study regarding, HJR 33.
- House rules.
 - Adoption, HR 1.
 - Joint legislative rules, SJR 1.
- House rules, adoption, HR 1.
- Income tax laws, study, HJR 13.
- Industrial properties, assessment of, SJR 17.
- Interim committees.
 - Entities attached to agencies for administrative purposes.
 - Assignment of entity to committee by legislative council, Ch 92.
 - Interim monitoring, SJR 26.
 - Public defender office and state compensation insurance fund, jurisdiction, Ch 91.
 - Reporting, Ch 126.
 - Review of advisory councils established by statute, Ch 126.
- Law and justice interim committee.
 - Public defender office included, Ch 91.
- Medicaid program study, SJR 20.
 - Children with developmental disabilities, waiver for services, SJR 27.
- Nonprofit corporations and organizations.
 - Study regarding tax exemptions, SJR 23.
- Parks, outdoor recreation and heritage resource programs.
 - Legislative study, HJR 32.
- Restorative justice programs, study of, SJR 29.
- Schools and education.
 - Study of performance-based funding for K-12 education, SJR 28.
- Select committee on efficiency in government, Ch 380.
- Senate rules.
 - Adoption, SR 1.
 - Joint legislative rules, SJR 1.
- State administration and veterans' affairs interim committee.
 - Public defender office and state compensation insurance fund excluded, Ch 91.
- Subdivisions.
 - Study of exemptions from review, HJR 39.
- Tax expenditures.
 - Reporting and legislative requirements, Ch 379.

LICENSE PLATES.

- Demonstrator plates.
 - Trucks and trailers, use on, Ch 129.
- Standard license plate designs, use of prior versions, Ch 231.
- Trailers, Chs 117, 127.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

- Incorporation of model act language and general amendments, Ch 27.

LIFE INSURANCE.

- Discretionary groups, Ch 163.

LIMITED LIABILITY COMPANIES.

- Business mailing address, Ch 26.

General Index

- LIMITED LIABILITY COMPANIES (Continued)
 - Reinstatement following administrative dissolution, Chs 26, 355.
 - Workers' compensation.
 - Manager-managed limited liability companies working in construction, Ch 200.
- LIMITED LIABILITY PARTNERSHIPS.
 - Registration, Ch 26.
 - Reservation of name, Ch 26.
- LIMITED PARTNERSHIPS.
 - Uniform limited partnership act, Ch 216.
- LIVESTOCK.
 - Beef promotion and marketing.
 - Collection of beef check-off, Ch 417.
 - Bison management plan.
 - Communication between department of livestock and private landowners, SJR 14.
 - Domestic livestock trailing, non-commercial activity, Ch 254.
 - Livestock loss reduction and mitigation board, Ch 339.
 - Renaming livestock loss board, Ch 229.
 - Livestock loss reduction and mitigation restricted account, Ch 339.
 - Powers of department.
 - Rules and orders to prevent spread of disease, Ch 5.
 - Predatory animal state special revenue account, Ch 339.
 - Testing of livestock.
 - Confidentiality of information, Ch 16.
 - Transfer of department functions to board of milk control.
 - Repeal of termination date of prior act, Ch 188.
 - Wolf management activities.
 - Livestock loss reduction and mitigation board.
 - Sale or auction of wolf carcasses, Ch 71.
- LODGING FACILITY USE TAX.
 - Deposit of proceeds in state general fund, Ch 319.
- LONG-TERM CARE FACILITIES.
 - Medication aides, Ch 392.
- LOTTERY.
 - Observation of prize drawings, Ch 40.
 - Tax withholding from lottery winnings, Ch 340.
- LOW-SPEED ELECTRIC VEHICLES, Ch 209.
 - Operation of golf carts on public streets or highways, Ch 247.

- M -

- MARIJUANA.
 - Board of medical examiners.
 - Complaints of physician practices involving medical marijuana, Ch 124.
 - Medical marijuana, use of.
 - Montana marijuana act, Ch 419.

General Index

MARIJUANA (Continued)

- Medical marijuana, use of (Continued)

- Rights of employers, Ch 315.

- Synthetic marijuana as dangerous drug, Ch 156.

MEDICAID.

- Legislative studies.

- Children with developmental disabilities, waiver for services, SJR 27.

- Ways to increase program effectiveness, SJR 20.

- Managed care contracts.

- Review of requests for proposals and proposed contracts, Ch 351.

- Physician reimbursement rates, Ch 397.

MEDICAL EXAMINERS BOARD.

- Acupuncturist as member, Ch 18.

MEDICAL PRACTICE GROUP QUALITY ASSURANCE, Ch 291.

MENTAL HEALTH CARE ADVANCE DIRECTIVE, Ch 329.

MICHAEL W. HAYNES MEMORIAL HIGHWAY, Ch 105.

MILITARY AFFAIRS.

- Credit ratings used to underwrite or rate risks.

- Military service overseas considered extraordinary event, Ch 314.

- Designation of military affected areas.

- Military compatibility act, Ch 354.

- Disposition of remains by use of defense department form, Ch 158.

- Recognition of Montanans who have served as part of global war on terror, HJR 19.

- Relocation of F-15C/D mission from Great Falls to Fresno California.

- Urge for government to reconsider, HR 2, SR 28.

MINES AND MINING.

- Coal bed methane protection account.

- Subject to legislative funds transfers, Ch 312.

- Coal beneficiation plants, Ch 408.

- Coal board, confirmation of appointment, SR 5.

- Coal gross proceeds tax.

- Abatement of tax, Ch 406.

- Coal leases.

- Procedures for leasing of land for coal mining, Ch 332.

- Royalties under coal lease contract, Chs 243, 332.

- Coal prospecting permits and procedures, Ch 407.

- Coal severance taxes.

- Bonds.

- Renewable resource projects, financing, Ch 366.

- Credits to general fund, Ch 312.

- Trust funds, Ch 389.

- Confirmation of appointment to coal board, SR 21, 22.

- Confirmation of appointment to hard rock mining impact board, SR 7.

- County clerk fees.

- Location and labor regarding mining claims, Ch 215.

- In situ coal gasification, Ch 398.

MINES AND MINING (Continued)

Metal mine reclamation.

Permit reviews, Ch 410.

Permit contractors under metal mine reclamation provisions.

Direct invoice of permit applicant, Ch 145.

Reclamation and development grants, appropriations, Ch 388.

Strip and underground mining reclamation.

Definitions, clarifications, Ch 408.

Vegetative cover of water management facilities, Ch 84.

Workday for certain miners and employees, Ch 212.

MONTANA 24/7 SOBRIETY PROGRAM ACT.

Driving under the influence, Ch 318.

MONTANA COWBOY HALL OF FAME, Ch 165.

MONTANA HEALTH CARE FREEDOM ACT.

Mandating purchase of health insurance coverage.

Prohibited, Ch 310.

MONTANA MARIJUANA ACT, Ch 419.

MONTANA MORTGAGE ACT.

Comprehensive revision of mortgages laws, Ch 317.

MONTANANS WITH DEVELOPMENTAL DISABILITIES WEEK, HJR 5.

MONTANA SCHOOL FOR THE DEAF AND BLIND.

Status with regard to service credit, Ch 99.

MONUMENTS AND MEMORIALS.

Montana's Northern prairie.

Designation as national monument by federal government without consent of legislature and governor, HJR 4.

Mural to honor women as community builders, Ch 279.

MORGAN-MONCHY PORT OF ENTRY.

Support for extended hours of operation, HJR 17.

MORTGAGES.

Comprehensive revision of mortgages laws.

Montana mortgage act, Ch 317.

Veterans' home loan mortgage program, Ch 349.

MOTOR CARRIERS.

Field inspectors, Ch 4.

Public service commission, regulation by.

Charter services, exemption, Ch 218.

MOTOR CLUB SERVICE COMPANIES.

Exemptions from provisions, Ch 103.

MOTOR VEHICLE ACCIDENTS.

Duties of drivers involved, failure to comply, Ch 235.

MOTOR VEHICLES AND TRAFFIC REGULATIONS.

Certificate of title.

Salvage certificates, Ch 78.

Transfer by insurance company, use of electronic signatures, Ch 74.

General Index

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)

- Child safety restraint systems, Ch 280.
- Gross vehicle weight requirements.
 - Definition of steering axle, Ch 131.
- Intersections, yielding the right-of-way, Ch 104.
- Liability insurance.
 - Designation of auto repair business, prohibitions, Ch 290.
 - Special risk classifications for private passenger automobile policies, Ch 239.
 - Verification system, delay of implementation, Ch 73.
- Low-speed electric vehicles, Ch 209.
 - Operation of golf carts on public streets or highways, Ch 247.
- Oversize or overweight vehicles.
 - Rear flag vehicle escort, when needed, Ch 210.
 - Term permit, Ch 34.
- Registration.
 - State parks, registration fee for, Ch 326.
- Speed limits.
 - Local authority to set limits on unpaved roads, Ch 204.

- N -

NATIONAL GUARD.

- Federal regulations governing, Ch 22.

NATURAL RESOURCES AND CONSERVATION DEPARTMENT.

- Cataract Creek dam project.
 - Department disposition of project, Ch 144.
- Reclamation and development grants, appropriations, Ch 388.
- Renewable resource grant and loan program.
 - Appropriations, Ch 365.
- Study of hydroelectric power generation capacity, reporting on, Ch 275.
- Treasure state endowment funds and accounts.
 - Appropriations to department, Ch 389.

NAVIGABLE RIVER BED USES, Ch 359.

NEGOTIABLE INSTRUMENTS.

- Bad check collection fees, Ch 48.

9-1-1 EMERGENCY SYSTEM.

- Wireless enhanced 9-1-1 account distribution.
 - Extension of time period, Ch 2.

NONPROFIT CORPORATIONS AND ORGANIZATIONS.

- Study regarding tax exemptions, SJR 23.

NUISANCES.

- Shooting ranges.
 - Noises not considered public nuisance, Ch 299.

NURSERY STOCK.

- Nurseries, plant dealers or small plant vendors, Ch 341.

General Index

NURSES.

Health insurance coverage for services provided by certain nurses, Ch 173.

Medical assistance programs, Ch 122.

- O -

OFF-HIGHWAY VEHICLES.

Operation on public roads, Ch 106.

Operation on state parks and fishing access sites, Ch 191.

OIL AND GAS.

Board of oil and gas conservation.

Appointments, SR 23.

Regulation of injection wells, Ch 184.

Leases on federal lands, responsible development, SJR 12.

Petroleum release remediation.

Benchmarks and prioritization, Ch 394.

Petroleum mixing zones, Ch 189.

OLDER MONTANANS TRUST FUND.

Appropriations to fund, Ch 312.

OPEN MEETINGS.

Minutes of meetings, public inspection, Ch 65.

ORPHAN SHARE ACCOUNT.

Subject to legislative funds transfer, Ch 312.

OUTFITTERS AND GUIDES.

Contracting for equipment, Ch 179.

Executive director of board, Ch 100.

Investigations, Ch 100.

Net client hunter use expansion, elimination, Ch 328.

Small and seasonal establishments.

Health standards, guidelines for, Ch 334.

Transfer of license, Ch 100.

- P -

PARDONS AND PAROLE.

Board, Ch 102.

Department of public health and human services, persons committed to custody of.

Eligibility for nonmedical parole, Ch 176.

PARENTAL NOTICE OF ABORTION, Ch 307.

PARENTAL RIGHTS AMENDMENT.

Affirmation, SJR 9.

PARKS AND RECREATION.

Legislative study regarding parks, outdoor recreation and heritage resource programs, HJR 32.

General Index

PARKS AND RECREATION (Continued)

- Primitive parks, Ch 233.

- State parks.

 - Money from sale or lease of property, Ch 62.

PARTNERSHIPS.

- University or college foundations and endowment funds, contributions to.

 - Tax credit, Ch 140.

PATIENT SAFETY ACT.

- Prescription drug registry, Ch 241.

PEACE OFFICERS.

- Death or serious injury of officer.

 - Blue alert program to assist in capturing persons responsible, Ch 159.

PHARMACISTS AND PHARMACIES.

- Influenza vaccine administration, Ch 119.

- Medical assistance programs, Ch 122.

PHYSICIANS AND SURGEONS.

- Board of medical examiners.

 - Complaints of physician practices involving medical marijuana, Ch 124.

 - Health care workforce needs study, SJR 18.

 - Medicaid reimbursement rates, Ch 397.

 - Medical assistance programs, Ch 122.

- Privileged communications.

 - Fraudulently obtaining dangerous drugs , exceptions, Ch 194.

 - Quality assurance by medical practice groups, Ch 291.

PINTLER VETERANS' MEMORIAL SCENIC HIGHWAY, Ch 222.

PLANTS.

- Nurseries, plant dealers or small plant vendors, Ch 341.

- Sampling of plants, intellectual property claims regarding, Ch 260.

PLUMBERS.

- Appointments to board, SR 26.

PODIATRISTS.

- Licensure, Ch 100.

POWER OF ATTORNEY.

- Uniform power of attorney act, Ch 109.

PREDATORY LOITERING BY SEXUAL OFFENDER, Ch 274.

PRESCRIPTION DRUG REGISTRY.

- Patient safety act, Ch 241.

PRESERVATION REVIEW BOARD.

- Interim monitoring, SJR 26.

- Reports from state agencies and university system, Ch 187.

PRINCIPAL AND INCOME ACT.

- Allocation of taxable income, Ch 285.

- Marital deduction requirements, Ch 285.

General Index

- PRIVATE AIR AMBULANCE SERVICES.
 - Membership subscriptions, Ch 237.
- PRIVATE INVESTIGATORS AND SECURITY PERSONNEL, Ch 100.
- PRIVATE PROPERTY ASSESSMENTS, Ch 286.
- PROFESSIONAL AND OCCUPATIONAL LICENSING AND REGULATION.
 - Electronic notice of change of address, Ch 100.
 - Non-discriminatory application of standards and rules, Ch 51.
 - Reciprocal licensing of out-of-state applicants, Ch 100.
 - Review of licensing boards to determine necessity of board, Ch 330.
 - Screening panel authority, Ch 100.
- PROPERTY TAXES.
 - Assessment revision, Ch 399.
 - Business equipment tax rate reduction reimbursement, Ch 116.
 - Calculation of levy, Chs 393, 411.
 - Centrally assessed property, Ch 411.
 - Legislative study, SJR 17.
 - Taxpayer right to know, Ch 276.
 - Class 8 property, assessment of, Ch 411.
 - Class 9 property, assessment of, Ch 411.
 - Classification and appraisal of property, Ch 356.
 - Energy storage facilities, classification, Ch 309.
 - Indian tribes, exemption of certain property owned by, Ch 278.
 - Federal trust application pending, temporary exemption, Ch 288.
 - Industrial properties, assessment of.
 - Legislative study, SJR 17.
 - Nonprofit corporations and organizations.
 - Study regarding tax exemptions, SJR 23.
 - Protested taxes, Ch 261.
 - Residential dwellings, adjustment of rate, Ch 3.
 - Surplus government fund balance tax credit, Ch 311.
 - Townhomes and townhouses, valuation and optional declaration, Ch 373.
 - Valuation of property, Ch 356.
 - Objection to appraisal, Ch 399.
 - Veterans' exemptions.
 - Clubhouse, building or land, Ch 107.
- PROTECTION ORDERS.
 - Temporary order.
 - Warning required regarding penalty for violation of order, Ch 37.
- PUBLIC DEFENDER ACCOUNT.
 - Costs for representation in probate case or commitment of developmentally disabled person, Ch 31.
- PUBLIC DEFENDER COMMISSION.
 - Chief appellate defender, supervision of, Ch 24.
 - Chief public defender, duties, Ch 344.
 - Contracted services program, Ch 344.
 - Fiscal year reporting, Ch 394.
 - General revisions of public defender act, Ch 344.

PUBLIC DEFENDER COMMISSION (Continued)

- Interim monitoring of public defender office, SJR 26.
- Office of public defender.
- Appropriation for, Ch 281.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

- Benefit amounts, Ch 369.
- Disability retirement, Ch 369.
- Eligibility for retirement, Ch 369.
- General revisions, Ch 99.
- Irrigation project, separate entity managing or operating.
 - Participation in retirement system, Ch 404.
- Member contributions, Ch 369.
- New hires, Ch 369.
- Service credit, Ch 99.
- Survivorship benefit, Ch 369.

PUBLIC HEALTH AND HUMAN SERVICES DEPARTMENT.

- Commission on provider rates and services.
- Members and technical advisors, Ch 327.

PUBLIC OFFICERS AND EMPLOYEES.

- Board of personnel appeals proceedings.
 - Service by mail, Ch 10.
- Group benefit plan.
 - Mandated benefits, Ch 54.
- Meals, expenses for.
 - Firefighters involved in wildfire suppression, Ch 251.
- Open meetings.
 - Minutes of meetings, public inspection, Ch 65.
- Public service announcements, restrictions, Ch 386.
- Term-limited offices.
 - Clarification of term of office, Ch 304.

PUBLIC PROCUREMENT.

- Cooperative purchasing.
 - Competitive contracts established by nonprofit entities, Ch 185.

PUBLIC RECORDS.

- Secretary of state.
 - State records committee and rulemaking regarding public records, Ch 170.

PUBLIC SERVICE ANNOUNCEMENTS.

- Restrictions regarding public officers and employees, Ch 386.

PUBLIC SERVICE COMMISSION.

- Electricity buying cooperatives.
 - Assignment of membership, elimination of authority for, Ch 20.
- Motor carriers, regulation.
 - Charter services, exemption, Ch 218.
- Small power production facilities.
 - Sale of electricity under prescribed rates, Ch 69.
 - Setting of rates, Ch 60.

PUBLIC UTILITIES.

Electricity supply service.

Provision in territory of another utility, Ch 120.

Eminent domain powers, Ch 321.

Facility siting.

Increasing capacity of existing transmission lines, Ch 224.

Residential utility line extensions.

Refund for small customers advancing money to utility for subsequent extensions, Ch 248.

PUBLISHING POLICY COMMITTEE.

Elimination, Ch 148.

- Q -

QUARANTINE AND PEST MANAGEMENT ACT.

Penalty for violations, Ch 303.

- R -

RAPTORS.

Nonresidents capturing raptors within state, Ch 118.

REAL ESTATE APPRAISALS.

Appraisers and appraisal management companies, Ch 270.

REAL ESTATE BROKERS AND SALESPERSONS.

Appointments to board of realty regulation, SR 26.

Designated physical address, Ch 100.

Educational requirements, Ch 100.

Supervising brokers, Ch 79.

REAL PROPERTY TRANSFERS.

Transfer fee covenants, Ch 259.

RECORDATION OF INSTRUMENTS.

County clerks.

Standards and fees for recorded documents, Ch 135.

Exemption for acknowledgment by notary, Ch 45.

RENEWABLE POWER PRODUCTION.

Local owners, definition, Ch 56.

Renewable energy credit reports, Ch 115.

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM.

Appropriations, Ch 365.

RENEWABLE RESOURCE PROJECTS.

Reauthorization, Ch 366.

RESEARCH AND COMMERCIALIZATION ACCOUNT.

Distribution of funds, Ch 337.

RESPONSIBLE ALCOHOL SALES AND SERVICE ACT, Ch 412.**REVENUE DEPARTMENT.**

Alternative office hours, Ch 295.

General Index

RIGHTS OF WAY.

Historic right of way on state lands, Ch 325.

RURAL SPECIAL IMPROVEMENT DISTRICTS.

Assessments.

Increase in number of benefited lots, tracts or parcels.

Recalculation of assessment, Ch 293.

- S -

SALVIA.

Dangerous drugs, Ch 156.

SCHOOL DISTRICTS.

BASE budgets and funding, Ch 418.

Block grants, Ch 418.

Reimbursement provisions, Ch 411.

Bond election ballots, Ch 271.

Budget amendments, Ch 418.

Budget and financing, deadlines, Ch 152.

Construction bonds, security for.

Maturity date time limit, Ch 306.

Cooperative purchasing contracts, Ch 418.

County transportation reimbursements, Ch 411.

Energy conservation measures, financing, Ch 25.

General fund operating reserve, Ch 418.

Indebtedness limitations, Ch 271.

Multidistrict agreements, Ch 418.

Residency of students, rules, Ch 211.

Transfers from fund to fund, Ch 418.

Trustees.

Elections, Ch 271.

Number and scope of authority, Ch 14.

SCHOOLS AND EDUCATION.

Adult basic education.

Organizations administering programs, Ch 171.

Appropriations to superintendent of public instruction, Ch 418.

Confirmation of board appointments, SR 13.

Digital academy, Ch 418.

Legislature.

Study of performance-based funding for K-12 education, SJR 28.

Montana parents as scholars program, Ch 287.

Montana pathway to excellence program, Ch 418.

Montana school for the deaf and blind.

Exemption from vacancy savings, Ch 394.

Status with regard to service credit, Ch 99.

Office of public instruction.

Appropriation for, Ch 281.

Performance data transparency, Ch 418.

Residency of students, rules, Ch 211.

Rural and urban divide in Montana, study of, SJR 8.

SCHOOLS AND EDUCATION (Continued)

- Saturday school, Ch 193.
- School facility and technology account.
 - Appropriations for grants, Ch 313.
- Special education.
 - State-operated adult health care facility offering special education services to residents, Ch 44.
- State equalization aid.
 - State trust land, definition, Ch 93.
- Student records.
 - Provision to Montana youth challenge program, Ch 15.

SECRETARY OF STATE.

- State records committee and rulemaking regarding public records, Ch 170.

SECURITIES.

- Order of commissioner, judicial review, Ch 227.

SECURITIES RESTITUTION ASSISTANCE FUND, Ch 58.

SEED LABORATORY.

- Advisory board, Ch 300.
- Generally, Ch 300.

SENTENCING.

- District courts.
 - Youth found guilty of offense arising during crime for which district court may sentence, Ch 87.
- Revocation of suspended or deferred sentence.
 - Time for filing petition, Ch 230.

SEWAGE DISPOSAL AND SEWER SYSTEMS.

- Challenging of certain rates, repeal of provision, Ch 55.
- Reclaimed wastewater from public sewage systems.
 - Regulation by board of environmental review, Ch 85.

SEX OFFENDERS.

- Predatory loitering by sexual offender, Ch 274.

SEXUAL ASSAULT.

- Subsequent offenses, Ch 46.

SHERIFFS' RETIREMENT SYSTEM.

- Highest average compensation, calculating, Ch 155.

SHOOTING RANGES.

- Noises not considered public nuisance, Ch 299.

SMALL CLAIMS COURTS.

- Civil jurisdiction, Ch 284.

SMALL POWER PRODUCTION FACILITIES.

- Sale of electricity under prescribed rates, Ch 69.
- Setting of rates, Ch 60.

SMOKING.

- Clean indoor air act.
 - Medical marijuana included in definition of smoking, Ch 7.

General Index

SNOWMOBILE AREA OPERATORS.

Department of fish, wildlife and parks.

Environmental review compliance, exception, Ch 157.

SOLID WASTE MANAGEMENT.

Local government powers and duties, Ch 196.

Municipal garbage and solid waste services, Ch 301.

SOUTHWESTERN MONTANA VETERANS' HOME.

Capital project financing, Ch 324.

SPECIAL DISTRICTS.

Appeal of assessment, Ch 265.

Rural special improvement districts.

Increase in number of benefited lots, tracts or parcels.

Recalculation of assessment, Ch 293.

SPEED LIMITS.

Local authority to set limits on unpaved roads, Ch 204.

STATE FINANCE.

Historical interpretation special revenue account, Ch 358.

Navigable river bed uses.

PPL Montana, LLC compensation to state for use of beds, Ch 362.

Transfers of funds, Ch 312.

Use of certain accounts and funds, Ch 337.

Warrants.

Stale-dated, Ch 82.

STATE LANDS.

Cabin site leases or licenses, Ch 401.

Deposit of income from islands and riverbeds held in trust, Ch 371.

Wrongful use or occupation.

Disposition of judgment proceeds, Ch 413.

STATE PARKS.

Money from sale or lease of property, Ch 62.

Motor vehicle registration fee for state parks, Ch 326.

STATE PUBLICATIONS, Ch 148.**SUBDIVISIONS.**

Approval of application and preliminary plat, Ch 252.

Cluster development.

Open space preservation, Ch 137.

Exemption from review, legislative study, HJR 39.

Review of applications for water and sewer facilities and solid waste disposal, Ch 217.

Sanitation facilities.

Drainfield mixing zones, location, Ch 83.

Wildland-urban interface parcel designations.

Denial based on designation, prohibition, Ch 409.

SUPREME COURT.

Districts, Ch 203.

Justices, election, Ch 203.

General Index

SURPLUS LINES INSURANCE, Ch 350.

- T -

TAXATION.

Coal gross proceeds tax.
Abatement of tax, Ch 406.
County tax appeal board.
Number of members, Ch 197.
Department of revenue.
Alternative office hours, Ch 295.
Report on tax expenditures, Ch 379.
Disposal of tax records, Ch 206.
Entitlement share payments, Chs 393, 411.
Gray water systems, tax abatement, Ch 405.
Income taxes.
See INCOME TAXES.
Lodging facility use tax.
Deposit of proceeds in state general fund, Ch 319.
Lottery winnings, withholding, Ch 340.
Nonprofit corporations and organizations.
Study regarding tax exemptions, SJR 23.
Penalty assessments on delinquent taxes, Ch 353.
Property taxes.
See PROPERTY TAXES.
State tax appeal board.
Confirmation of appointment, SR 3.
Surplus government fund balance tax credit, Ch 311.
Tax expenditures.
Reporting and legislative requirements, Ch 379.
University or college foundations and endowment funds, contributions to.
Credit, Ch 140.

TEACHERS' RETIREMENT SYSTEM.

Compensation limits, Ch 151.
Early retirement allowance, Ch 151.
Employer failure to make certain reports, Ch 151.
Purchase of service credit.
Actuarially assumed interest rate, Ch 151.
Reporting requirements of retired member, Ch 151.
Revisions and technical corrections, Ch 59.
University system optional retirement program.
Employer contributions, supplemental, Ch 273.

TECHNICAL CORRECTIONS BILL, Ch 19.

TELECOMMUNICATIONS.

Account for telecommunications services and equipment for persons with disabilities, Ch 312.
Alternative form of regulation, petition for, Ch 263.
Wireless enhanced 9-1-1 account distribution.
Extension of time period, Ch 2.

General Index

TOWNHOMES.

Property taxes.

Townhomes and townhouses, valuation and optional declaration, Ch 373.

TOW TRUCKS.

Commercial tow truck, definition, Ch 80.

Law enforcement rotation system, letter of appointment, Ch 143.

Rotation area, definition, Ch 136.

TRAILERS.

License plates, Chs 117, 127.

Demonstrator plates, Ch 129.

TRANSPORTATION DEPARTMENT.

Administration of federal transit administration grants.

Recovery of costs, Ch 70.

Appointments to transportation commission, SR 20.

Construction projects.

Use of postconsumer recycled materials, Ch 166.

TRUCKS.

License plates.

Demonstrator plates, Ch 129.

Weigh stations, weight requirements, Ch 142.

24/7 SOBRIETY PROGRAM ACT.

Driving under the influence, Ch 318.

- U -

UNEMPLOYMENT INSURANCE.

Exclusions from definition of employment, Ch 123.

Exclusions from wages, Ch 123.

Experience ratings, Ch 123.

Leaving work without good cause, Ch 123.

Misconduct, defined, Ch 98.

Offset of lottery winnings, Ch 123.

Overpayments, Ch 123.

Respite care, Ch 123.

Subpoena power of department, Ch 123.

Total unemployment, Ch 123.

Victims of domestic violence, Ch 123.

UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT, Ch 192.

UNIFORM LIMITED PARTNERSHIP ACT, Ch 216.

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT, Ch 352.

UNIVERSITY SYSTEM.

Assistance program, Ch 202.

Group benefit plan.

Mandated benefits, Ch 54.

Posttenure review process for teachers, SJR 11.

General Index

UNIVERSITY SYSTEM (Continued)

- Preservation review board.
 - Reports from state agencies and university system, Ch 187.
- Retirement program.
 - Contributions, Ch 273.
- Rural and urban divide in Montana, study of, SJR 8.
- Self-insured student health plan, Ch 199.

URBAN RENEWAL DISTRICTS.

- Consideration for county and school districts which include municipal territory, Ch 376.
- Public notice and reports regarding urban renewal plans, Ch 374.
- Resolution of necessity, criteria, Ch 375.

- V -

VACCINES.

- Pharmacists and pharmacies.
 - Influenza vaccine administration, Ch 119.

VETERANS.

- Home loan mortgage program, Ch 349.
- Interment allowance from county, Ch 33.
- Property taxes.
 - Clubhouse, building or land, exemptions, Ch 107.
- Southwestern Montana veterans' home.
 - Capital project financing, Ch 324.

VICTIMS OF CRIME.

- Restorative justice programs, legislative study of, SJR 29.

VIDEO GAMBLING MACHINES.

- Ticket vouchers, Ch 66.

VOLUNTEER FIREFIGHTERS COMPENSATION ACT, Ch 64.

- Pension benefit amount, Ch 195.

- W -

WATER AND SEWER DISTRICTS.

- Assessment methods to meet obligations, Ch 35.
- Auditing and accounting of finances, Ch 13.
- Board members, Ch 214.
- Municipal system rate challenges and regulation, Ch 214.

WATER AND WASTEWATER AUTHORITIES, REGIONAL.

- Consent of public agency for operations within agency's jurisdiction, Ch 13.

WATER QUALITY.

- Federal water pollution control act.
 - Determination of which waters subject to, SJR 7.
- In situ coal gasification.
 - Injections not considered pollution, Ch 398.

General Index

WATER QUALITY (Continued)

- Nutrient standards variances, Ch 267.
- Revolving funds.
 - Water pollution control and drinking water.
 - Forgiveness of loan principal, Ch 297.
- Total maximum daily loads.
 - Progress reports, Ch 302.

WATER RIGHTS.

- Appropriation.
 - Application for permit or change in appropriation rights.
 - Appeal of final decision, recovery of costs and fees, Ch 360.
 - Fire agencies, for emergency fire protection, Ch 97.
 - Geothermal heating and cooling exchange applications.
 - Water wells and springs for, Ch 96.
 - More than 4000 acre-feet of water annually, permit, Ch 112.
- Aquifer recharge and mitigation, Ch 29.
- Associate water judges, Ch 335.
- Blackfoot tribe water rights compact mitigation account.
 - Bond issues for water-related infrastructure project, Ch 147.
 - Statutory appropriation for, Ch 57.
- Confirmation of judicial appointments.
 - Chief water judge C. Bruce Loble, SR 2.
- Navigable river bed uses, Ch 359.
 - PPL Montana, LLC compensation to state for use of beds, Ch 362.

WATER SUPPLY AND WATERWORKS.

- Bottled water, use to achieve contaminant level for nitrate.
 - Variance or exemption, Ch 213.
- Gray water systems, tax abatement, Ch 405.
- Reclaimed wastewater from public sewage systems.
 - Regulation by board of environmental review, Ch 85.
- Regional water authorities.
 - Acquisition of rights of way on state land, Ch 141.

WEED MANAGEMENT.

- Court order to manage noxious weeds, Ch 320.
- Notice of infestations, Ch 244.
- Noxious weed fund, Ch 244.
- Plans and agreements, Ch 244.
- Powers and duties of board, Ch 244.
- Weed coordinator, Ch 244.

WEIGH STATIONS.

- Weight requirements, Ch 142.

WELCOME HOME VIETNAM VETERANS DAY, Ch 89.**WELLS.**

- Board of oil and gas conservation.
 - Regulation of injection wells, Ch 184.
- Carbon dioxide injection wells.
 - Certificate of completion, Ch 264.
- Permitting for water wells.
 - Exemptions, study regarding, Ch 256.

WIND ENERGY RIGHTS ACT, Ch 249.

WOLVES.

- Livestock loss reduction and mitigation board.
- Sale or auction of wolf carcasses retrieved during wolf management activities, Ch 71.
- Support of legislation to remove gray wolf from endangered species lists, HJR 1.
- Wolf management account, Ch 390.
- Wolf management funding, Ch 400.

WORKERS' COMPENSATION.

- Agricultural laborers.
- Definition of employee, Ch 262.
- Claims processes, Ch 167.
- Employment, definitions, Ch 167.
- Independent contractor exemption certificate, Ch 150.
- Insurer designation of physician, Ch 167.
- Interest on security deposit, accrual to insurer, Ch 150.
- Manager-managed limited liability companies working in construction, Ch 200.
- Medical director and medical review panel, Ch 167.
- Medical marijuana, use of.
- Rights of employers, Ch 315.
- Permanent partial disability, Ch 167.
- Public safety volunteers, Ch 255.
- Reports on state fund to insurance commissioner, Ch 167.
- Retroactive benefits, Ch 167.
- Settlements and lump-sum payments, Ch 36.
- State compensation insurance fund.
- Board of directors, Ch 63.
- Confirmation of appointment, SR 18.
- Legislative committees, inclusion, Ch 91.
- Stay-at-work/return-to-work assistance fund, Ch 167.
- Timely payment of medical providers, Ch 150.
- Vocational rehabilitation, Ch 167.

- Y -

YOUTH COURT.

- Juvenile delinquency intervention program.
- Transfer of funds in lieu of evaluation, Ch 95.

- Z -

ZONING.

- Military affected areas.
- Military compatibility act, Ch 354.
- Municipal zoning.
- Condominium unit counted individually as part of protest, Ch 88.