

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

**Enacted or Passed by the**

**SIXTIETH LEGISLATURE  
IN REGULAR SESSION**

**Held at Helena, the Seat of Government  
January 3, 2007, through April 27, 2007**

**and the**

**SIXTIETH LEGISLATURE  
IN SPECIAL SESSION**

**Held at Helena, the Seat of Government  
May 10, 2007, through May 15, 2007**

**and the**

**FIFTY-NINTH LEGISLATURE  
IN SPECIAL SESSION**

**Held at Helena, the Seat of Government  
December 14 & 15, 2005**

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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 - 219

## Volume II

Chapters 220 - 451

## Volume III

Chapters 452 - 521  
House Joint Resolutions  
House Resolutions  
Senate Joint Resolutions  
Senate Resolutions  
2006 Ballot Issues  
Index to Appropriations  
General Index  
Tables  
    Code Sections Affected  
    Session Laws Affected  
    Senate Bill to Chapter Number  
    House Bill to Chapter Number  
    Chapter Number to Bill Number  
    Effective Dates By Chapter Number  
    Effective Dates By Date  
    Session Law to Code  
    2006 Ballot Issues  
May 2007 Special Session Material  
December 2005 Special Session Material

## Volume I

Officers and Members of the Montana Senate  
Officers and Members of the Montana House of Representatives  
Title Contents of Bills and Resolutions

House and Senate Bills .....	i
House Joint Resolutions .....	lxxvi
House Resolutions .....	lxxix
Senate Joint Resolutions .....	lxxix
Senate Resolutions .....	lxxx
Chapters 1 - 219 .....	1



# **LAWS AND RESOLUTIONS**

**Enacted or Passed by the**

## **SIXTIETH LEGISLATURE IN REGULAR SESSION**

**Held at Helena, the Seat of Government  
January 3, 2007, through April 27, 2007**

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

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LEGISLATIVE SERVICES DIVISION**

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**OFFICERS AND MEMBERS  
OF THE MONTANA SENATE**

**2007**

50 Members

26 Democrats

24 Republicans

**OFFICERS**

President.....Mike Cooney  
 President Pro Tempore .....Dan Harrington  
 Majority Leader .....Carol Williams  
 Majority Whips .....Lane Larson, Lynda Moss  
 Minority Leader .....Corey Stapleton  
 Minority Whips .....Greg Barkus, Dan McGee  
 Secretary of the Senate .....John Mudd

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Brueggeman, John	(R)	6	321 Lakeview Dr, Polson MT 59860-9317
Cobb, John	(R)	9	PO Box 388, Augusta MT 59410-0388
Cocchiarella, Vicki	(D)	47	515 8th Ave, Helena MT 59601-3778
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Hansen, Ken (Kim)	(D)	17	PO Box 686, Harlem MT 59526-0686
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Tash, Bill	(R)	36	240 Vista Dr, Dillon MT 59725-3111
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Tropila, Mitch	(D)	12	PO Box 2286, Great Falls MT 59403-2286
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**OFFICERS AND MEMBERS  
OF THE MONTANA HOUSE OF REPRESENTATIVES**

**2007**

100 Members

50 Republicans

49 Democrats

1 Constitutionalist

**OFFICERS**

Speaker .....Scott Sales  
 Speaker Pro Tempore.....Debby Barrett  
 Majority Leader.....Michael Lange  
 Majority Whips.....Tom McGillvray, Gary MacLaren  
 Minority Leader.....John Parker  
 Deputy Minority Leader .....Bob Bergren  
 Minority Floor Leader .....Art Noonan  
 Minority Whips.....Margarett Campbell, Dave McAlpin  
 Minority Caucus Leader.....Dan Villa  
 Chief Clerk of the House.....Marilyn Miller

**MEMBERS**

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Dutton, Ernie	(R)	56	2046 Mariposa Ln, Billings MT 59102-2347
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# TITLE CONTENTS

## HOUSE AND SENATE BILLS

<u>Chapter</u>		<u>Page</u>
1	<i>(House Bill No. 1; Sinrud)</i> APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	1
2	<i>(House Bill No. 10; Franklin)</i> APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . .	1
3	<i>(House Bill No. 42; McChesney)</i> EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	1
4	<i>(House Bill No. 41; Augare)</i> ELIMINATING RESTRICTIONS ON USE OF THE PRINCIPAL OF THE ENERGY CONSERVATION AND ENERGY ASSISTANCE ACCOUNT IN THE FEDERAL SPECIAL REVENUE FUND; AMENDING SECTION 90-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	2
5	<i>(House Bill No. 21; Morgan)</i> ALLOWING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO PREPARE FOR INTRODUCTION DURING A SPECIAL SESSION OF THE LEGISLATURE AN ESTIMATE OF THE AMOUNT OF PROJECTED REVENUE; AMENDING SECTIONS 5-3-101 AND 5-5-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	2
6	<i>(House Bill No. 23; Hiner)</i> CORRECTING THE ERRONEOUS DEPOSIT TO A STATE SPECIAL REVENUE FUND OF A PERCENTAGE OF CERTAIN DRIVER'S LICENSE FEES; AMENDING SECTION 61-5-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	3
7	<i>(House Bill No. 470; Olson)</i> CLARIFYING THAT IN THE SALE OF REAL PROPERTY FOR PAYMENT OF TAXES, INTEREST AND COSTS PAYABLE UPON REDEMPTION ACCRUE UNTIL THE DATE OF REDEMPTION AND MUST BE CALCULATED BY THE COUNTY TREASURER; AMENDING SECTIONS 15-18-212 AND 15-18-217, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . .	5
8	<i>(House Bill No. 121; McChesney)</i> CLARIFYING THE RESPONSIBILITY OF THE DEPARTMENT OF TRANSPORTATION FOR THE ADMINISTRATION OF THE HIGHWAY TRAFFIC SAFETY PROGRAM; REQUIRING THE DEPARTMENT TO WORK WITH THE OFFICE OF PUBLIC INSTRUCTION TO PROVIDE SUPPORT AND MAINTENANCE OF DRIVER TRAINING FACILITIES; AND AMENDING SECTION 61-2-103, MCA . . . . .	7
9	<i>(House Bill No. 333; McChesney)</i> PROVIDING FOR AND REGULATING PARIMUTUEL WAGERING ON MATCH BRONC RIDES AND WILD HORSE RIDES; AMENDING SECTIONS 23-4-101, 23-4-104, 23-4-105, 23-4-201, AND 23-4-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	8
10	<i>(Senate Bill No. 15; J. Tropila)</i> PROHIBITING THE PICKETING OF FUNERALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . .	13

- 11 *(Senate Bill No. 54; Cocchiarella)* GENERALLY REVISING LAWS RELATING TO LICENSING BOARDS; PROVIDING FOR JOINT MEETINGS OF BOARDS WITH A SIMILAR OR OVERLAPPING SCOPE OF PRACTICE OR DUAL LICENSURE; REVISING DEPARTMENT DUTIES TOWARD BOARDS; CHANGING THE BOARD OF ATHLETICS TO A PROGRAM; EXPANDING JURISDICTION OVER ATHLETIC EVENTS TO ANY COMBATIVE EVENT; REMOVING AN EXCEPTION FOR COMBATIVE EVENTS FOR CONTESTANTS UNDER 16 YEARS OF AGE CONDUCTED BY A RECOGNIZED AMATEUR ASSOCIATION; COMBINING THE BOARD OF LANDSCAPE ARCHITECTS WITH THE BOARD OF ARCHITECTS; REPEALING THE UNIFORM ATHLETE AGENTS ACT; AMENDING SECTIONS 2-15-1730, 2-15-1744, 2-15-1750, 2-15-1753, 2-15-1761, 18-2-113, 23-3-301, 23-3-402, 23-3-404, 23-3-405, 23-3-501, 23-3-502, 23-3-601, 23-3-602, 23-3-603, 37-1-101, 37-1-401, 37-65-102, 37-65-204, 37-65-323, AND 37-66-103, MCA; REPEALING SECTIONS 2-15-1762, 2-15-1772, 23-3-401, 23-3-403, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-120, 37-76-121, 37-76-122, AND 37-76-123, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 15
- 12 *(Senate Bill No. 97; Cocchiarella)* CLARIFYING THAT THE DEPARTMENT OF JUSTICE MAY RECEIVE A WORKERS' COMPENSATION PAYMENT FOR A HIGHWAY PATROL MEMBER RECEIVING A DEPARTMENT OF JUSTICE SALARY BENEFIT; AMENDING SECTIONS 39-71-742, 39-71-743, AND 44-1-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 25
- 13 *(Senate Bill No. 101; Jent)* AUTHORIZING THE PLACEMENT OF A PLAQUE TO COMMEMORATE THE ORIGINAL HEADQUARTERS OF THE MONTANA HIGHWAY PATROL; AND AMENDING SECTION 2-17-808, MCA . . . . . 26
- 14 *(House Bill No. 44; McChesney)* ELIMINATING THE SCHOOL BOND CONTINGENCY LOAN FUND; AMENDING SECTIONS 17-5-703 AND 17-5-704, MCA; REPEALING SECTIONS 20-9-466 AND 20-9-467, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 28
- 15 *(House Bill No. 72; Van Dyk)* REVISING THE PROFESSIONAL EMPLOYER ORGANIZATION LAW; ESTABLISHING REQUIREMENTS FOR THE DEPARTMENT OF LABOR AND INDUSTRY PERTAINING TO BACKGROUND CHECKS RELATED TO PROFESSIONAL EMPLOYER ORGANIZATION LICENSING; ALLOWING WAIVERS OF CERTAIN PERIODIC REPORTING REQUIREMENTS; REQUIRING PROOF OF MONTANA WORKERS' COMPENSATION INSURANCE COVERAGE; AMENDING SECTIONS 39-8-202, 39-8-205, AND 39-8-207, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 31
- 16 *(House Bill No. 115; Cohenour)* REVISING AND CLARIFYING THE REQUIREMENTS FOR THE PUBLICATION OF ANNUAL AND BIENNIAL HUNTING, FISHING, TRAPPING, AND LAND USE REGULATIONS, SPECIAL SEASON CLOSURES, CREATION OR CLOSURE OF PRESERVES, REFUGES, SANCTUARIES, REST GROUNDS, OR CLOSED DISTRICTS, AND EMERGENCY CLOSURES OF DEPARTMENT OF FISH, WILDLIFE, AND PARKS LANDS AND PUBLIC WATERS THAT ARE ADOPTED BY THE FISH, WILDLIFE, AND PARKS COMMISSION; AMENDING SECTIONS 87-1-202 AND 87-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 38
- 17 *(House Bill No. 122; Keane)* INCREASING THE DEPARTMENT OF TRANSPORTATION'S AUTHORIZED LEASE TERM FROM 10 YEARS

TO 40 YEARS ON LEASES FOR SPACE, IMPROVEMENTS, OR EQUIPMENT IN STATE AIRPORTS; AND AMENDING SECTION 67-2-302, MCA . . . . . 40

18 *(House Bill No. 126; Keane)* REPEALING THE REQUIREMENT THAT THE DEPARTMENT OF TRANSPORTATION SET LIABILITY INSURANCE RATES FOR COMMERCIAL AIR CARRIERS; REPEALING SECTIONS 67-3-401, 67-3-402, 67-3-403, 67-3-404, AND 67-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 41

19 *(House Bill No. 127; Keane)* REQUIRING THE DEPARTMENT OF TRANSPORTATION TO MAKE IMMEDIATE DEPOSIT OF AIRCRAFT REGISTRATION FEES TO THE GENERAL FUND; AND AMENDING SECTION 67-3-205, MCA . . . . . 41

20 *(House Bill No. 219; Ebinger)* ADDING DEFINITIONS OF “SELL” AND “STORAGE LOT” TO MOTOR VEHICLE DEFINITIONS; PROVIDING THAT A DEALER MAY STORE MOTOR VEHICLES ON A STORAGE LOT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 61-1-101 AND 61-4-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 41

21 *(House Bill No. 292; Stahl)* ALLOWING A COUNTY TO ENTER INTO LEASE-PURCHASE AGREEMENTS FOR A PERIOD NOT TO EXCEED 20 YEARS FOR THE CONSTRUCTION, FURNISHING, AND PURCHASING OF A DETENTION CENTER AND TO LEASE COUNTY PROPERTY USED FOR A DETENTION CENTER FOR A PERIOD NOT TO EXCEED 30 YEARS; AMENDING SECTIONS 7-8-2231 AND 7-32-2201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 53

22 *(House Bill No. 419; Koopman)* ALLOWING A TOWN OR THIRD-CLASS CITY TO PLACE GAS TAX FUNDS IN A RESTRICTED ASSET ACCOUNT WITHIN THE GAS TAX APPORTIONMENT FUND UNTIL AN EXPENDITURE IS NEEDED; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 54

23 *(House Bill No. 431; Blasdel)* REQUIRING THAT THE DEPARTMENT OF LIVESTOCK DEFINE “CLASS” AS IT PERTAINS TO CLASSES OF UTILIZATION OF MILK BY RULE AND USE THE CURRENT DEFINITIONS OF CLASSES OF UTILIZATION OF MILK THAT ARE FOUND IN THE CODE OF FEDERAL REGULATIONS; ALLOWING THE DEPARTMENT TO COMBINE ANY OF THE CLASSES OF MILK PROVIDED FOR IN THE FEDERAL DEFINITIONS INTO A SINGLE CLASS; AND AMENDING SECTIONS 81-23-101 AND 81-23-302, MCA . . . . . 57

24 *(House Bill No. 18; W. Jones)* REPEALING THE STATUTORY TIME LIMIT FOR FILING TRAVEL EXPENSE VOUCHERS FOR MULTICOUNTY TRAVEL BY DISTRICT COURT JUDGES IN MULTICOUNTY DISTRICTS; REPEALING SECTION 3-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 61

25 *(House Bill No. 38; McChesney)* AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE LICENSES AT REDUCED PRICES TO HARVEST ANTLERLESS MOOSE, COW OR CALF BISON, AND ADULT EWE MOUNTAIN SHEEP FOR MANAGEMENT PURPOSES; CLARIFYING THE ISSUANCE OF LICENSES FOR A SECOND ELK; AMENDING SECTIONS 87-2-104, 87-2-505, AND 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 61

26 *(House Bill No. 46; Gallik)* ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY

JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA. . . . . 63

27 (House Bill No. 48; Jacobson) AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ESTABLISH THE NATIONAL GUARD EDUCATION BENEFIT PROGRAM; EXTENDING THE TERMINATION DATE FOR TUITION WAIVERS FOR A QUALIFIED MEMBER OF THE MONTANA NATIONAL GUARD; AMENDING SECTION 20-25-421, MCA, AND SECTION 5, CHAPTER 577, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 64

28 (House Bill No. 76; McNutt) REVISING AND CLARIFYING PROCEDURES FOR PROCESSING OF HUMAN RIGHTS COMPLAINTS; ADDING THE DEPARTMENT OF LABOR AND INDUSTRY AS A PARTY OF INTEREST IN TEMPORARY INJUNCTION PROVISIONS AND IN PROVISIONS FOR ENFORCEMENT PETITIONS FOR ORDERS AND CONCILIATION AGREEMENTS; CLARIFYING THE FUNCTION OF INFORMAL INVESTIGATION PROCESS; CLARIFYING PROCEDURES INCLUDING PROCEDURES FOR FILING COMPLAINTS, DEPARTMENT PROCESSES FOLLOWING INFORMAL INVESTIGATIONS BY THE DEPARTMENT, FILING OF OBJECTIONS, AND HEARING PROCEDURES AND RESPONSIBILITIES; CLARIFYING PROCEDURES UPON A FINDING OF DISCRIMINATION AND IN APPEALS; REVISING AND CLARIFYING PROCEDURES FOR THE REVIEW OF DEPARTMENT ACTION BY THE HUMAN RIGHTS COMMISSION; REVISING AND CLARIFYING PROCEDURES FOR CONCLUSION OF A COMPLAINT; REVISING AND CLARIFYING PROCEDURES AND REMEDIES IN HOUSING DISCRIMINATION COMPLAINTS; AMENDING SECTIONS 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-507 AND 49-2-509, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 66

29 (House Bill No. 82; Parker) REVISING THE ELEMENTS OF THE CRIME OF POSSESSION OF CHILD PORNOGRAPHY; PROVIDING DEFINITIONS; AMENDING SECTIONS 45-5-625 AND 50-19-501, MCA; AND REPEALING SECTION 45-5-620, MCA . . . . . 74

30 (House Bill No. 106; Cordier) ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF COMMERCE ACT AS AN OMBUDSMAN FOR THE TOURISM INDUSTRY AND RECREATIONISTS IN ALL MATTERS CONCERNING THE MANAGEMENT AND REGULATION OF THE LEVEL OF FLATHEAD LAKE; AMENDING SECTION 90-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 76

31 (House Bill No. 137; Villa) REVISING CONDITIONS UNDER THE MICROBUSINESS DEVELOPMENT ACT TO INCREASE ACCESS TO DEVELOPMENT LOANS; REVISING THE DEFINITION OF "QUALIFIED MICROBUSINESS"; AMENDING SECTIONS 17-6-402, 17-6-403, AND 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 77

32 (House Bill No. 156; Franklin) GENERALLY REVISING LONG-TERM CARE INSURANCE LAWS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO NONFORFEITURE BENEFITS; EXPANDING RULEMAKING AUTHORITY FOR THE COMMISSIONER OF INSURANCE; REVISING PROVISIONS RELATING TO DELIVERY OF POLICY SUMMARIES; REVISING PROVISIONS RELATING TO BENEFIT TRIGGERS; PROVIDING ADDITIONAL STANDARDS FOR LONG-TERM CARE INSURANCE CONTRACTS; REQUIRING TRAINING FOR INSURANCE PRODUCERS IN THE LONG-TERM CARE FIELD; PROVIDING PENALTIES; AMENDING SECTIONS 33-20-127, 33-20-128, 33-22-1107, 33-22-1111, 33-22-1115, 33-22-1116,

## TITLE CONTENTS

	33-22-1119, 33-22-1121, 33-22-1123, 33-22-1124, AND 33-22-1125, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . .	80
33	<i>(House Bill No. 158; L. Jones)</i> GENERALLY REVISING FILING REQUIREMENTS FOR CORPORATIONS AND LIMITED LIABILITY COMPANIES; DEFINING “AUTHORIZED AGENT”; ALLOWING THE SECRETARY OF STATE TO CORRECT CERTAIN ERRORS ON DOCUMENTS CAUSED BY A FILING OFFICER; EXPANDING THE TYPE OF INSTRUMENTS THAT MAY BE FILED WITH THE SECRETARY OF STATE AS SURETY FOR SEISMIC EXPLORATION ACTIVITY; AND AMENDING SECTIONS 32-1-422, 35-1-113, 35-1-217, 35-1-1104, 35-1-1309, 35-2-119, 35-2-1109, 35-8-102, 35-8-208, 82-1-104, AND 82-1-107, MCA . . . . .	93
34	<i>(House Bill No. 162; Hiner)</i> REVISING THE REQUIREMENT FOR APPOINTMENT OF COUNSEL FOR A PERSON WITH A DEVELOPMENTAL DISABILITY IN A PROCEEDING FOR COMMITMENT TO A RESIDENTIAL FACILITY; AND AMENDING SECTION 53-20-125, MCA . . . . .	103
35	<i>(House Bill No. 226; Cohenour)</i> PROHIBITING THE HOLDER OF A REPLACEMENT LICENSE, PERMIT, OR TAG FROM MAKING THE REPLACEMENT LICENSE, PERMIT, OR TAG AVAILABLE FOR USE BY ANOTHER PERSON; AMENDING SECTION 87-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	105
36	<i>(House Bill No. 255; Clark)</i> CLARIFYING THE TYPES OF RESIDENCES IN WHICH DISABLED OR HOMEBOUND CUSTOMERS MAY RECEIVE COSMETOLOGY AND BARBERING SERVICES OUTSIDE OF A SALON OR A SHOP; PROVIDING EXCLUSIONS FROM THE DEFINITION OF “SALON OR SHOP”; AND AMENDING SECTION 37-31-101, MCA . . . . .	106
37	<i>(House Bill No. 274; Mendenhall)</i> ALLOWING SPECIAL MILITARY OR VETERAN LICENSE PLATES TO BE ISSUED FOR TRAVEL TRAILERS OR TRAILERS; AMENDING SECTION 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . .	108
38	<i>(House Bill No. 290; Bergren)</i> ALLOWING THE FIRE SERVICES TRAINING SCHOOL TO MAKE ITS RESOURCES AVAILABLE TO LOCAL FIRE PROTECTION ENTITIES IN AN EMERGENCY; AND AMENDING SECTION 20-31-104, MCA . . . . .	110
39	<i>(House Bill No. 402; Noonan)</i> REVISING FEES COLLECTED BY THE SUPREME COURT; REQUIRING CROSS-APPELLANTS TO PAY A FILING FEE; INCREASING CERTAIN FEES AND ADDING FEES; AMENDING SECTION 3-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	110
40	<i>(Senate Bill No. 10; Harrington)</i> ESTABLISHING A SINGLE UNIFORM RATE OF MILEAGE ALLOWANCE FOR LEGISLATORS; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	111
41	<i>(Senate Bill No. 11; Cocchiarella)</i> REVISING THE OPTIONAL RETIREMENT SYSTEM MEMBERSHIP REQUIREMENT FOR EMPLOYEES OF THE LEGISLATIVE BRANCH PERFORMING DUTIES RELATED TO A LEGISLATIVE SESSION; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	112
42	<i>(Senate Bill No. 20; Shockley)</i> CLARIFYING THE AUTHORITY TO APPOINT A TEMPORARY CONSERVATOR; AMENDING SECTION 72-5-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	114

43	( <i>Senate Bill No. 35; J. Tropila</i> ) TO INCLUDE THE STATE OF MONTANA IN THE STATEWIDE MUTUAL AID SYSTEM; AMENDING SECTION 10-3-903, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	115
44	( <i>Senate Bill No. 39; Brown</i> ) GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 60TH LEGISLATURE; AND AMENDING SECTIONS 2-15-3304, 7-1-2111, 7-6-1544, 7-14-4631, 7-15-4296, 7-15-4299, 10-3-1204, 13-1-202, 15-2-102, 15-30-313, 15-35-102, 15-39-105, 15-39-107, 15-70-357, 16-2-101, 16-3-322, 16-3-324, 16-11-149, 17-5-507, 17-7-112, 20-3-324, 20-5-322, 20-5-420, 20-9-408, 20-9-443, 20-9-472, 20-9-501, 20-25-421, 23-2-502, 23-2-614, 23-2-615, 30-9A-501, 33-1-1302, 33-1-1303, 33-10-106, 33-20-1303, 33-20-1315, 33-22-2001, 37-1-101, 37-1-303, 37-8-202, 37-27-302, 37-31-331, 37-73-216, 37-47-201, 44-1-504, 45-5-209, 50-60-115, 50-60-705, 61-1-101, 61-3-101, 61-3-116, 61-3-217, 61-3-224, 61-3-301, 61-3-303, 61-3-311, 61-3-321, 61-3-461, 61-3-462, 61-3-721, 61-4-109, 61-5-121, 61-8-715, 76-9-103, 76-14-103, 76-15-302, 82-4-127, 82-4-222, 85-2-225, 85-2-350, AND 87-5-704, MCA, SECTION 14, CHAPTER 464, LAWS OF 2005, AND SECTION 5, CHAPTER 535, LAWS OF 2005 . . . . .	116
45	( <i>House Bill No. 20; McNutt</i> ) PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR ENFORCEMENT OF ALL WATER RIGHTS; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	190
46	( <i>House Bill No. 43; McChesney</i> ) REVISING LAWS GOVERNING CANCELED AND DUPLICATE STATE WARRANTS; REVISING TERMS; ELIMINATING EXCEPTIONS FOR INDEMNIFICATION FOR REPLACEMENT WARRANTS; AND AMENDING SECTIONS 2-18-411, 17-8-303, 17-8-306, AND 39-3-213, MCA . . . . .	191
47	( <i>House Bill No. 62; Jacobson</i> ) PROVIDING THAT VACATION LEAVE MAY BE DONATED TO A NONREFUNDABLE SICK LEAVE FUND; PROVIDING THAT DONATED VACATION LEAVE IS NOT ELIGIBLE FOR CASH COMPENSATION UPON TERMINATION; AMENDING SECTIONS 2-18-617 AND 2-18-618, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	193
48	( <i>House Bill No. 65; Villa</i> ) GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF \$100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT;	



## TITLE CONTENTS

	AMENDING SECTIONS 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . .	195
49	<i>(House Bill No. 84; McAlpin)</i> CLARIFYING THE JURISDICTION OF COURTS CONCERNING MISDEMEANOR CRIMINAL ACTIONS PROSECUTED UNDER THE MONTANA ALCOHOLIC BEVERAGE CODE; AND AMENDING SECTION 16-6-201, MCA . . . . .	201
50	<i>(House Bill No. 90; MacLaren)</i> INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM; EXTENDING BY 5 YEARS THE TERM OF THE LOAN AND THE TEMPORARY INCREASE IN FEES FOR SECURITY INTEREST FILINGS AND CERTIFICATES OF TITLE TO REPAY THE LOAN; APPROPRIATING AN ADDITIONAL \$6 MILLION FROM THE CAPITAL PROJECTS FUND TO THE DEPARTMENT OF JUSTICE FOR THE INFORMATION TECHNOLOGY SYSTEM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 17-5-1608, 17-5-2001, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA; REPEALING SECTION 15, CHAPTER 562, LAWS OF 2003, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	202
51	<i>(House Bill No. 94; Van Dyk)</i> REVISING THE UNDERGROUND STORAGE TANK ADMINISTRATIVE PENALTY LAWS; ELIMINATING DEPARTMENT OF ENVIRONMENTAL QUALITY RULEMAKING AUTHORITY FOR A PENALTY SCHEDULE; MODIFYING THE ADMINISTRATIVE PENALTY NOTICE REQUIREMENTS; ALLOWING A PERSON ASSESSED A PENALTY TO REQUEST A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW INSTEAD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A FIXED SCHEDULE OF MAXIMUM AND MINIMUM PENALTIES FOR SPECIFIC VIOLATIONS; AMENDING SECTIONS 75-11-505, 75-11-512, AND 75-11-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	209
52	<i>(House Bill No. 111; Furey)</i> REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE TREATMENT OF LIMITED LIABILITY COMPANIES; DEFINING THE TERM "LICENSED AND PRACTICING HEALTH CARE PROVIDER"; CLARIFYING EMERGENCY PROVISIONS; REMOVING BONDING REQUIREMENTS; CLARIFYING PROVISIONS FOR TAX APPEALS; RELIEVING CERTAIN EMPLOYERS OF BENEFIT CHARGES ASSOCIATED WITH REHIRING RETURNING MILITARY PERSONNEL; REVISING CONTRIBUTION RATE SCHEDULES; REVISING DISABILITY DISQUALIFICATION; REVISING THE FORMULA FOR EXTENDED BENEFIT AMOUNTS; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-204, 39-51-301, 39-51-405, 39-51-406, 39-51-1105, 39-51-1109, 39-51-1214, 39-51-1218, 39-51-2302, 39-51-2304, 39-51-2306, AND 39-51-2510, MCA; AND PROVIDING EFFECTIVE DATES . . . . .	212
53	<i>(House Bill No. 143; Reinhart)</i> REVISING THE QUARTERLY REPORTING REQUIREMENT LAWS FOR MOTOR VEHICLE WRECKING FACILITIES; TRANSFERRING FROM THE MOTOR VEHICLE WRECKING LAWS TO THE MOTOR VEHICLE LAWS ENFORCEMENT OF THE REQUIREMENT THAT MOTOR VEHICLE WRECKING FACILITIES SEND QUARTERLY REPORTS TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 61-3-211, 61-12-402, 75-10-513, AND 75-10-541, MCA . . . . .	229

54	<i>(House Bill No. 167; Hands)</i>	REVISING THE INTEGRATED WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT LAWS; REVISING THE PROCESS FOR ADOPTING THE STATE SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY PLAN; TRANSFERRING THE AUTHORITY TO ADOPT THE PLAN FROM THE BOARD OF ENVIRONMENTAL REVIEW TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AND AMENDING SECTIONS 75-10-104, 75-10-106, 75-10-111, 75-10-807, AND 75-10-920, MCA . . . . .	233
55	<i>(House Bill No. 264; Heinert)</i>	ALLOWING A LICENSED ANGLER FISHING FROM A BOAT OR THE SHORE IN A LAKE OR RESERVOIR TO FISH BY HOOK AND TWO LINES OR TWO RODS; AMENDING SECTION 87-2-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	237
56	<i>(House Bill No. 334; McChesney)</i>	REMOVING THE TIME RESTRICTIONS ON THE DESIGN-BUILD HIGHWAY CONTRACT PROCESS FOR HIGHWAY CONSTRUCTION PROJECTS; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-134, AND 60-2-137, MCA; REPEALING SECTIONS 60-2-135 AND 60-2-136, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	238
57	<i>(Senate Bill No. 19; Shockley)</i>	REVISING LAWS GOVERNING OIL AND GAS OPERATIONS; REQUIRING A SEISMIC ACTIVITY PERMITHOLDER TO FURNISH INFORMATION TO A SURFACE OWNER; REQUIRING AN OIL OR GAS DEVELOPER OR OPERATOR TO PROVIDE INFORMATION TO A SURFACE OWNER; REQUIRING THE SURFACE OWNER TO PROVIDE INFORMATION; INCREASING THE TIME PERIODS FOR NOTICE OF DRILLING OPERATIONS; CLARIFYING THAT A SURFACE OWNER AND OIL AND GAS DEVELOPER OR OPERATOR MAY USE DISPUTE RESOLUTION PROCESSES; CLARIFYING THE PENALTY FOR VIOLATING NOTICE REQUIREMENTS; AMENDING SECTIONS 82-1-107, 82-10-503, 82-10-504, AND 82-10-505, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . .	241
58	<i>(Senate Bill No. 29; Smith)</i>	ESTABLISHING THE ROBERT E. EWING JR. MEMORIAL HIGHWAY ON INTERSTATE 90 BETWEEN COLUMBUS AND PARK CITY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS; REQUIRING THAT MAPS BE UPDATED WITH THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	244
59	<i>(Senate Bill No. 30; Smith)</i>	ALLOWING A QUALIFIED VETERAN TO BE ISSUED SPECIAL COMBINATION DISABLED VETERAN AND PURPLE HEART LICENSE PLATES; AND AMENDING SECTIONS 49-4-302, 49-4-304, AND 61-3-458, MCA . . . . .	245
60	<i>(Senate Bill No. 32; Schmidt)</i>	ALLOWING THE LOCAL OMBUDSMAN ACCESS TO A LONG-TERM CARE FACILITY AFTER NORMAL VISITING HOURS WITH THE APPROVAL OF THE LONG-TERM CARE OMBUDSMAN TO PERFORM THE OMBUDSMAN'S DUTIES; AND AMENDING SECTION 52-3-604, MCA. . . . .	248
61	<i>(Senate Bill No. 40; Cocchiarella)</i>	GENDER NEUTRALIZING AND CONFORMING TITLES 1 THROUGH 7 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 1-1-107, 1-1-201, 1-1-202, 1-1-203, 1-1-204, 1-1-217, 1-1-219, 1-1-224, 1-1-226, 1-1-512, 1-1-515, 1-1-516, 1-3-203, 1-3-204, 1-3-205, 1-3-206, 1-3-208, 1-3-209, 1-3-210, 1-3-212, 1-3-217, 1-3-220, 1-3-234, 1-4-102, 1-5-302, 1-5-303, 1-5-305, 1-5-406, 1-5-407, 1-5-419, 1-5-420, 1-6-102, 1-6-104, 2-1-302, 2-2-205, 2-2-207, 2-2-304,	

2-3-105, 2-3-221, 2-4-104, 2-4-202, 2-4-506, 2-4-604, 2-4-613, 2-4-621,  
 2-6-106, 2-6-108, 2-6-111, 2-6-303, 2-6-304, 2-7-103, 2-7-511, 2-8-105,  
 2-9-101, 2-9-103, 2-9-112, 2-9-305, 2-9-314, 2-9-504, 2-9-507, 2-9-511,  
 2-9-512, 2-9-513, 2-9-514, 2-9-515, 2-9-516, 2-9-523, 2-9-524, 2-9-527,  
 2-9-528, 2-15-111, 2-15-122, 2-15-124, 2-15-131, 2-15-132, 2-15-201,  
 2-15-221, 2-15-302, 2-15-502, 2-15-602, 2-15-1202, 2-15-1203, 2-15-1515,  
 2-15-1521, 2-15-1701, 2-15-1742, 2-15-1744, 2-15-1748, 2-15-1814,  
 2-15-3002, 2-15-3003, 2-15-3104, 2-15-3305, 2-15-3331, 2-15-3402,  
 2-16-102, 2-16-114, 2-16-115, 2-16-202, 2-16-212, 2-16-213, 2-16-303,  
 2-16-406, 2-16-504, 2-16-505, 2-16-507, 2-16-513, 2-16-521, 2-16-603,  
 2-16-612, 2-16-613, 2-16-616, 2-16-617, 2-16-620, 2-16-621, 2-16-622,  
 2-16-633, 2-16-635, 2-17-816, 2-18-106, 2-18-107, 2-18-512, 2-18-612,  
 2-18-616, 2-18-619, 2-18-621, 2-18-902, 2-18-1001, 2-18-1011, 3-1-402,  
 3-1-404, 3-1-405, 3-1-504, 3-1-514, 3-1-515, 3-1-516, 3-1-517, 3-1-522,  
 3-1-601, 3-1-602, 3-1-603, 3-1-604, 3-1-605, 3-1-606, 3-1-607, 3-1-701,  
 3-1-1003, 3-1-1009, 3-1-1010, 3-1-1103, 3-1-1104, 3-1-1106, 3-1-1108,  
 3-1-1109, 3-1-1110, 3-1-1111, 3-1-1122, 3-1-1502, 3-1-1503, 3-2-102,  
 3-2-212, 3-2-301, 3-2-401, 3-2-406, 3-2-502, 3-5-115, 3-5-201, 3-5-202,  
 3-5-213, 3-5-214, 3-5-215, 3-5-216, 3-5-311, 3-5-401, 3-5-405, 3-5-503,  
 3-5-504, 3-5-505, 3-5-508, 3-5-509, 3-5-611, 3-6-101, 3-6-203, 3-6-303,  
 3-7-201, 3-7-203, 3-7-224, 3-10-201, 3-10-202, 3-10-209, 3-10-233,  
 3-10-234, 3-10-401, 3-10-405, 3-10-502, 3-10-514, 3-10-602, 3-10-706,  
 3-10-1005, 3-11-202, 3-11-203, 3-11-204, 3-11-205, 3-12-203, 3-15-201,  
 3-15-203, 3-15-401, 3-15-504, 3-15-601, 3-15-602, 3-15-604, 3-15-701,  
 3-15-801, 5-1-105, 5-2-102, 5-2-104, 5-2-105, 5-2-211, 5-2-213, 5-2-216,  
 5-2-302, 5-2-405, 5-4-204, 5-4-302, 5-4-303, 5-4-304, 5-4-305, 5-4-306,  
 5-5-101, 5-5-102, 5-5-103, 5-5-105, 5-5-301, 5-5-302, 5-5-413, 5-5-415,  
 5-5-418, 5-5-419, 5-5-420, 5-5-421, 5-5-431, 5-6-109, 5-7-101, 5-7-201,  
 5-7-203, 5-7-210, 5-7-301, 5-11-104, 5-11-204, 5-12-202, 5-12-203, 5-13-303,  
 5-13-306, 5-13-307, 5-13-309, 5-13-402, 5-15-102, 5-15-103, 5-15-105,  
 5-15-201, 5-16-105, 7-1-4121, 7-2-101, 7-2-2206, 7-2-2207, 7-2-2223,  
 7-2-2227, 7-2-2228, 7-2-2242, 7-2-2255, 7-2-2405, 7-2-2411, 7-2-2412,  
 7-2-2423, 7-2-2502, 7-2-2503, 7-2-2504, 7-2-2603, 7-2-2702, 7-2-2703,  
 7-2-2705, 7-2-2706, 7-2-2712, 7-2-2750, 7-2-2756, 7-2-2757, 7-2-4107,  
 7-2-4807, 7-2-4913, 7-3-102, 7-3-151, 7-3-179, 7-3-183, 7-3-193, 7-3-203,  
 7-3-212, 7-3-220, 7-3-221, 7-3-301, 7-3-301, 7-3-304, 7-3-305, 7-3-312, 7-3-315,  
 7-3-403, 7-3-414, 7-3-432, 7-3-433, 7-3-434, 7-3-435, 7-3-436, 7-3-437,  
 7-3-438, 7-3-439, 7-3-440, 7-3-441, 7-3-442, 7-3-501, 7-3-503, 7-3-514,  
 7-3-601, 7-3-603, 7-3-605, 7-3-606, 7-3-607, 7-3-612, 7-3-613, 7-3-705,  
 7-3-1215, 7-3-1219, 7-3-1220, 7-3-1221, 7-3-1228, 7-3-1241, 7-3-1242,  
 7-3-1244, 7-3-1245, 7-3-1246, 7-3-1249, 7-3-1253, 7-3-1254, 7-3-1255,  
 7-3-1257, 7-3-1259, 7-3-1304, 7-3-1305, 7-3-1307, 7-3-1314, 7-3-1315,  
 7-3-1317, 7-3-1319, 7-3-1320, 7-3-1322, 7-3-1331, 7-3-1341, 7-3-1346,  
 7-3-1348, 7-3-4102, 7-3-4201, 7-3-4205, 7-3-4207, 7-3-4213, 7-3-4214,  
 7-3-4215, 7-3-4216, 7-3-4217, 7-3-4218, 7-3-4220, 7-3-4221, 7-3-4253,  
 7-3-4254, 7-3-4255, 7-3-4256, 7-3-4257, 7-3-4259, 7-3-4316, 7-3-4319,  
 7-3-4320, 7-3-4322, 7-3-4361, 7-3-4363, 7-3-4365, 7-3-4367, 7-3-4402,  
 7-3-4403, 7-3-4405, 7-3-4406, 7-3-4409, 7-3-4411, 7-3-4412, 7-3-4431,  
 7-3-4433, 7-3-4434, 7-3-4441, 7-3-4443, 7-3-4444, 7-3-4461, 7-3-4463,  
 7-3-4464, 7-3-4465, 7-4-505, 7-4-2108, 7-4-2109, 7-4-2111, 7-4-2113,  
 7-4-2202, 7-4-2207, 7-4-2210, 7-4-2213, 7-4-2304, 7-4-2312, 7-4-2403,  
 7-4-2511, 7-4-2513, 7-4-2515, 7-4-2517, 7-4-2518, 7-4-2520, 7-4-2521,  
 7-4-2602, 7-4-2616, 7-4-2617, 7-4-2622, 7-4-2704, 7-4-2707, 7-4-2711,  
 7-4-2712, 7-4-2713, 7-4-2714, 7-4-2715, 7-4-2716, 7-4-2801, 7-4-2802,  
 7-4-2803, 7-4-2811, 7-4-2813, 7-4-2814, 7-4-2901, 7-4-2902, 7-4-2904,  
 7-4-2911, 7-4-2914, 7-4-2915, 7-4-2923, 7-4-4101, 7-4-4102, 7-4-4103,  
 7-4-4109, 7-4-4112, 7-4-4211, 7-4-4301, 7-4-4302, 7-4-4401, 7-4-4402,  
 7-4-4403, 7-4-4502, 7-4-4512, 7-4-4602, 7-4-4701, 7-5-101, 7-5-103, 7-5-135,  
 7-5-2127, 7-5-2130, 7-5-4102, 7-5-4112, 7-5-4142, 7-5-4201, 7-5-4308,

7-5-4322, 7-6-106, 7-6-207, 7-6-212, 7-6-2101, 7-6-2103, 7-6-2115, 7-6-2116,  
7-6-2117, 7-6-2118, 7-6-2204, 7-6-2403, 7-6-2405, 7-6-2406, 7-6-2410,  
7-6-2411, 7-6-2412, 7-6-2424, 7-6-2603, 7-6-2604, 7-6-2605, 7-6-2606,  
7-6-2801, 7-6-4301, 7-6-4304, 7-6-4502, 7-6-4601, 7-6-4603, 7-7-101,  
7-7-106, 7-7-2106, 7-7-2225, 7-7-2226, 7-7-2258, 7-7-2272, 7-7-2405,  
7-7-4103, 7-7-4224, 7-7-4225, 7-7-4256, 7-7-4258, 7-7-4261, 7-7-4272,  
7-7-4629, 7-7-4631, 7-7-4633, 7-8-2304, 7-8-2305, 7-8-2307, 7-8-2701,  
7-8-2707, 7-11-204, 7-11-207, 7-11-208, 7-11-210, 7-11-212, 7-11-227,  
7-12-1103, 7-12-1121, 7-12-1122, 7-12-2101, 7-12-2117, 7-12-2122,  
7-12-2135, 7-12-2137, 7-12-2139, 7-12-2140, 7-12-2154, 7-12-2158,  
7-12-2163, 7-12-2164, 7-12-4101, 7-12-4121, 7-12-4143, 7-12-4145,  
7-12-4148, 7-12-4152, 7-12-4167, 7-12-4168, 7-12-4170, 7-12-4182,  
7-12-4185, 7-12-4255, 7-12-4304, 7-12-4307, 7-12-4309, 7-12-4325,  
7-12-4353, 7-12-4604, 7-13-108, 7-13-124, 7-13-209, 7-13-218, 7-13-2209,  
7-13-2241, 7-13-2246, 7-13-2247, 7-13-2278, 7-13-2308, 7-13-2342,  
7-13-2345, 7-13-2505, 7-13-4107, 7-14-205, 7-14-1103, 7-14-2121,  
7-14-2122, 7-14-2135, 7-14-2137, 7-14-2201, 7-14-2302, 7-14-2303,  
7-14-2306, 7-14-2308, 7-14-2606, 7-14-2607, 7-14-2613, 7-14-2705,  
7-14-2707, 7-14-2708, 7-14-2709, 7-14-2712, 7-14-2719, 7-14-2720,  
7-14-2721, 7-14-2753, 7-14-2756, 7-14-2761, 7-14-2802, 7-14-2805,  
7-14-2823, 7-14-2826, 7-14-2827, 7-14-2828, 7-14-4201, 7-14-4203,  
7-14-4301, 7-14-4612, 7-14-4665, 7-14-4717, 7-14-4718, 7-14-4721,  
7-15-2107, 7-15-2108, 7-15-4221, 7-15-4234, 7-15-4239, 7-15-4264,  
7-15-4402, 7-15-4409, 7-15-4410, 7-15-4433, 7-15-4436, 7-15-4437,  
7-15-4439, 7-15-4528, 7-15-4530, 7-16-2312, 7-16-2325, 7-16-2330,  
7-16-2331, 7-21-2102, 7-21-2103, 7-21-2111, 7-21-2115, 7-21-2117,  
7-21-2120, 7-21-2305, 7-21-2306, 7-21-2307, 7-21-2308, 7-21-2309,  
7-21-2401, 7-21-2406, 7-21-2408, 7-21-2409, 7-21-2410, 7-21-2502,  
7-21-2505, 7-21-2506, 7-21-2507, 7-21-3104, 7-21-3105, 7-21-3106,  
7-21-3107, 7-21-3108, 7-21-3211, 7-21-3212, 7-21-3213, 7-21-3303,  
7-21-3307, 7-21-3435, 7-21-3453, 7-22-2214, 7-22-2225, 7-22-2401,  
7-22-2410, 7-22-2434, 7-23-101, 7-23-102, 7-31-112, 7-31-202, 7-31-2101,  
7-31-4102, 7-31-4206, 7-32-102, 7-32-108, 7-32-110, 7-32-115, 7-32-122,  
7-32-123, 7-32-124, 7-32-125, 7-32-126, 7-32-127, 7-32-128, 7-32-213,  
7-32-301, 7-32-302, 7-32-2101, 7-32-2104, 7-32-2107, 7-32-2108, 7-32-2121,  
7-32-2124, 7-32-2125, 7-32-2127, 7-32-2129, 7-32-2130, 7-32-2131,  
7-32-2143, 7-32-2202, 7-32-2207, 7-32-2208, 7-32-2211, 7-32-2234,  
7-32-2246, 7-32-2248, 7-32-2249, 7-32-2250, 7-32-4103, 7-32-4105,  
7-32-4106, 7-32-4107, 7-32-4108, 7-32-4109, 7-32-4110, 7-32-4111,  
7-32-4131, 7-32-4136, 7-32-4137, 7-32-4155, 7-32-4159, 7-33-2127,  
7-33-2312, 7-33-2315, 7-33-4104, 7-33-4124, 7-33-4125, 7-33-4133,  
7-34-2104, 7-34-2105, 7-34-2106, 7-34-2118, 7-35-2103, 7-35-2133,  
7-35-2139, 7-35-2141, AND 7-35-2144, MCA . . . . . 249

62 (Senate Bill No. 43; M. Tropila) MODIFYING LICENSING PROVISIONS FOR PETROLEUM MEASURING DEVICES WHEN OWNERSHIP OF THE DEVICES CHANGES; AND AMENDING SECTION 82-15-105, MCA 467

63 (Senate Bill No. 44; Larson) IMPLEMENTING A 2006 RECOMMENDATION OF THE PRIVATE LAND/PUBLIC WILDLIFE ADVISORY COUNCIL BY ADDING WILD BUFFALO OR BISON, ANTELOPE, AND MOUNTAIN LION TO THE LIST OF BIG GAME LICENSES THAT THE FISH, WILDLIFE, AND PARKS COMMISSION MAY ISSUE THROUGH AN ANNUAL LOTTERY; AMENDING SECTION 87-1-271, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 468

64 (Senate Bill No. 53; Cocchiarella) PROVIDING A PROCEDURE FOR CREATING A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; REQUIRING A LETTER OF INTENT TO ACCOMPANY A BILL DRAFT REQUEST FOR A NEW PROFESSIONAL

OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; PROVIDING CONDITIONS FOR A LETTER OF INTENT WHEN ADDING PROFESSIONS OR OCCUPATIONS TO EXISTING LICENSING BOARDS; ADDRESSING PROSPECTIVE FEES IN THE LETTER OF INTENT; AND PROVIDING A PROCEDURE FOR REVIEWING EXISTING BOARDS, CONSOLIDATING BOARDS, AND RESOLVING FINANCIAL CONSIDERATIONS FOR REPEALED BOARDS . . . . . 469

65 (*Senate Bill No. 59; Hansen*) APPLYING THE REGULATIONS OF THE FEDERAL HUMANE METHODS OF SLAUGHTER ACT OF 1978 TO THE PROVISIONS OF THE MONTANA MEAT AND POULTRY INSPECTION ACT; AMENDING SECTION 81-9-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 472

66 (*Senate Bill No. 62; Cobb*) REVISING THE DAILY PAY RATE FOR ADVISORY COUNCIL MEMBERS; AMENDING SECTION 2-15-122, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 472

67 (*Senate Bill No. 70; J. Tropila*) REVISING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION; AND AMENDING SECTION 10-3-1204, MCA . . . . . 474

68 (*Senate Bill No. 72; Squires*) REQUIRING THAT MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD APPOINTED BY THE GOVERNOR BE CONFIRMED BY THE SENATE; AMENDING SECTION 2-15-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 476

69 (*Senate Bill No. 73; McGee*) REQUIRING A FILING OFFICER TO GIVE NOTICE TO THE DEBTOR PRIOR TO REJECTING THE FILING OF OR REMOVING THE FILING OF A LIEN THAT THE FILING OFFICER HAS REASON TO BELIEVE IS IMPROPER OR FRAUDULENT; AND AMENDING SECTION 30-9A-420, MCA . . . . . 477

70 (*Senate Bill No. 76; Gillan*) AMENDING THE LAWS GOVERNING ACCESS TO TAX INFORMATION; PROVIDING FOR ACCESS TO CERTAIN TAX INFORMATION BY THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING CONFIDENTIALITY OF FEDERAL RETURN INFORMATION; REQUIRING THAT CONFIDENTIAL INFORMATION DISCLOSED TO THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING BE SUBJECT TO RESTRICTIONS ON DISCLOSURE; CLARIFYING THE AUTHORIZED DISCLOSURE OF CERTAIN CORPORATION TAX INFORMATION; CLARIFYING PENALTIES FOR UNAUTHORIZED DISCLOSURE; AMENDING SECTIONS 5-12-303, 15-30-303, 15-31-511, 17-1-132, AND 17-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 477

71 (*Senate Bill No. 81; Schmidt*) DEFINING "PROFESSIONAL PERSON" TO INCLUDE LICENSED PSYCHOLOGISTS; AND AMENDING SECTION 53-21-102, MCA . . . . . 485

72 (*Senate Bill No. 82; Brueggeman*) PROVIDING THAT THE RULES FOR USE OF INFORMATION TECHNOLOGY RESOURCES FOR THE LEGISLATIVE BRANCH BE INCLUDED IN THE LEGISLATIVE BRANCH COMPUTER SYSTEM PLAN; AND AMENDING SECTION 2-17-518, MCA . . . . . 488

73 (*Senate Bill No. 83; Schmidt*) CLARIFYING THE ROLE OF THE CHILD AND FAMILY SERVICES DIVISION WHEN A NONCUSTODIAL PARENT MAY BE CONSIDERED FOR CUSTODY OF A YOUTH IN NEED OF CARE; AND AMENDING SECTIONS 41-3-438, 41-3-442, AND 41-3-445, MCA . . . . . 489

74	( <i>Senate Bill No. 84; Elliott</i> ) TRANSFERRING ADMINISTRATION OF CERTAIN FOREST RESERVE AND OTHER FEDERAL FUNDS FROM THE STATE AUDITOR TO THE DEPARTMENT OF ADMINISTRATION FOR ALLOCATION TO ENTITLED COUNTIES; AMENDING SECTIONS 17-3-211 AND 17-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE	495
75	( <i>Senate Bill No. 85; Schmidt</i> ) REVISING THE CRIME OF ENDANGERING THE WELFARE OF CHILDREN BY INCLUDING METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; PROVIDING A PENALTY FOR METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; AND AMENDING SECTION 45-5-622, MCA	495
76	( <i>Senate Bill No. 90; Laslovich</i> ) AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADJUST THE PER DIEM CHARGE FOR AN INSTITUTION MORE THAN ONCE A YEAR; AMENDING SECTION 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	497
77	( <i>Senate Bill No. 126; Gallus</i> ) REPEALING THE TERMINATION OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM AND THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, WHICH WILL AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTINUE TO FUND AND IMPLEMENT PROJECTS TO RESTORE AND ENHANCE FISHERIES HABITAT AND ENSURE THAT FUNDING FROM THE RESOURCE INDEMNITY TRUST FUND IS MAINTAINED; REPEALING SECTION 5, CHAPTER 463, LAWS OF 1995, AND SECTIONS 6 AND 9, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	497
78	( <i>Senate Bill No. 136; J. Tropila</i> ) REVISING THE MEETING FREQUENCY OF THE BOARD OF VETERANS' AFFAIRS; AND AMENDING SECTION 2-15-1205, MCA . . . . .	498
79	( <i>Senate Bill No. 187; Bales</i> ) RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY-MONTANA COMPACT . . . . .	500
80	( <i>Senate Bill No. 188; Tash</i> ) RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION-MONTANA COMPACT . . . . .	509
81	( <i>House Bill No. 13; Sesso</i> ) GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE CLASSIFICATION AND COMPENSATION; REQUIRING THAT EMPLOYEES BE PLACED ON THE NEW BROADBAND PAY PLAN; PROVIDING FOR IMPLEMENTATION OF THE BROADBAND PAY PLAN BY STATE AGENCIES; REPLACING STATUTORY SALARIES FOR LEGISLATORS AND CERTAIN PUBLIC OFFICIALS WITH SALARIES BASED UPON THE BROADBAND PAY PLAN; INCREASING THE EMPLOYER CONTRIBUTION FOR GROUP BENEFITS; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-6-110, 2-15-131, 2-18-101, 2-18-201, 2-18-202, 2-18-203, 2-18-204, 2-18-206, 2-18-207, 2-18-301, 2-18-303, 2-18-304, 2-18-703, 2-18-1011, 2-18-1204, 5-2-301, 5-2-302, 13-37-106, 15-2-102, 39-51-301, AND 44-1-504, MCA; REPEALING SECTIONS 2-18-205 AND 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE . . . . .	516
82	( <i>Senate Bill No. 16; Hawks</i> ) SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE	

ELECTORATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 533

83 *(House Bill No. 28; Hilbert)* REVISING LAWS GOVERNING SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE; SUBJECTING UNLICENSED DRIVERS TO SUSPENSION OR REVOCATION OF THE PRIVILEGE TO APPLY FOR A DRIVER'S LICENSE; REVISING THE OFFENSE OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; AMENDING SECTIONS 61-1-101, 61-5-203, AND 61-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 533

84 *(House Bill No. 31; Kottel)* REVISING NEW VEHICLE WARRANTY LAWS BY INCREASING THE WEIGHT LIMIT FOR TRUCKS EXEMPT FROM THE DEFINITION OF "MOTOR VEHICLE" FROM 10,000 POUNDS TO 15,000 POUNDS; INCREASING CONSUMER AND MANUFACTURER ARBITRATION FILING FEES; AMENDING SECTIONS 61-4-501 AND 61-4-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 544

85 *(House Bill No. 51; Pomnichowski)* FORMALLY ELIMINATING STATE ADMINISTRATION OF THE MONTANA CONSERVATION CORPS BY REPEALING OBSOLETE STATUTES THAT PLACE THE MONTANA CONSERVATION CORPS WITHIN THE PARKS DIVISION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, SUBJECT TO THE OVERSIGHT OF THE OFFICE OF COMMUNITY SERVICE; AMENDING SECTION 90-14-103, MCA; REPEALING SECTIONS 23-1-301, 23-1-302, 23-1-303, 23-1-311, 23-1-312, 23-1-313, AND 23-1-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 546

86 *(House Bill No. 58; Keane)* INCREASING THE MAXIMUM UNEMPLOYMENT WEEKLY BENEFIT AMOUNT AND INCREASING THE MINIMUM UNEMPLOYMENT WEEKLY BENEFIT IF THE UNEMPLOYMENT INSURANCE CONTRIBUTIONS SCHEDULE IS SCHEDULE I; PROVIDING THAT AN INDIVIDUAL IS NOT DISQUALIFIED FROM RECEIVING UNEMPLOYMENT BENEFITS IF THE INDIVIDUAL LEAVES EMPLOYMENT AS A RESULT OF THE MANDATORY MILITARY TRANSFER OF THE INDIVIDUAL'S SPOUSE; AND AMENDING SECTIONS 39-51-2201 AND 39-51-2302, MCA. . . . . 547

87 *(House Bill No. 67; Heinert)* AMENDING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY STATUTES REGARDING A POLL OF THE LEGISLATURE CONCERNING ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 549

88 *(House Bill No. 70; Clark)* REVISING REQUIREMENTS RELATING TO THE PREPARATION OF MODEL ADMINISTRATIVE RULES AND THE PUBLICATION AND DISTRIBUTION OF ADMINISTRATIVE RULES; AND AMENDING SECTIONS 2-4-202, 2-4-302, 2-4-312, AND 2-4-313, MCA. . . . . 551

89 *(House Bill No. 75; McChesney)* STATUTORILY APPROPRIATING BENTONITE TAXES FOR DISTRIBUTION AS PROVIDED BY LAW; PROVIDING FOR A REMITTANCE AND DISTRIBUTION OF TAXES ON BENTONITE PRODUCTION OCCURRING BEFORE JANUARY 1, 2007; AMENDING SECTIONS 15-39-110 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 554

90 *(House Bill No. 81; Hamilton)* GENERALLY REVISING TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING THAT

PARAPROFESSIONALS MUST BE MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; REQUIRING ELECTED COUNTY SUPERINTENDENTS TO FILE A MEMBERSHIP ELECTION FORM UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THAT MEMBERS CANNOT CONCURRENTLY PARTICIPATE IN BOTH THE TEACHERS' RETIREMENT SYSTEM AND THE OPTIONAL RETIREMENT SYSTEM; REVISING THE REQUIREMENTS OF FAMILY LAW ORDERS TO PROVIDE FOR THE PAYMENT OF BENEFITS FOR THE LIFE OF THE ALTERNATE PAYEE; CLARIFYING THAT ONLY ACTIVE MEMBERS OR INACTIVE VESTED MEMBERS MAY PURCHASE SERVICE CREDIT; REQUIRING THAT ACCOUNTS REINSTATED FROM DORMANT STATUS INCLUDE INTEREST; PROVIDING FOR THE PAYMENT OF INTEREST ON CORRECTED ERRORS; CLARIFYING THE DATE OF TERMINATION FOR THE PURPOSE OF TERMINATION PAY; CLARIFYING THAT LUMP-SUM AMOUNTS DUE AN ESTATE MAY BE PAID TO THE PERSONAL REPRESENTATIVE OR EXECUTOR; REQUIRING EMPLOYERS TO USE THE SYSTEM'S ONLINE REPORTING SYSTEM FOR AUTHORIZING VOLUNTARY INSURANCE PREMIUM DEDUCTIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-202, 19-20-302, 19-20-305, 19-20-414, 19-20-427, 19-20-501, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-705, 19-20-716, 19-20-717, 19-20-731, 19-20-805, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .

558

91 (House Bill No. 86; Musgrove) GENERALLY REVISING THE LEGISLATIVE AUDIT ACT TO REFLECT CURRENT PROFESSIONAL STANDARDS AND AUDITING PRACTICES; PROVIDING FOR REPORTING OF APPARENT VIOLATIONS OF THE STATE CODE OF ETHICS TO THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR AUDIT SELECTION BASED ON RISK; REQUESTING THE GOVERNOR, BOARD OF REGENTS, AND JUDICIARY TO FURNISH RECOMMENDATIONS FOR AUDITS; PROVIDING EMPLOYMENT PROTECTION TO EMPLOYEES WHO PROVIDE INFORMATION TO THE LEGISLATIVE AUDIT COMMITTEE; AND AMENDING SECTIONS 5-13-101, 5-13-304, 5-13-308, 5-13-309, AND 5-13-321, MCA . . . . .

574

92 (House Bill No. 87; Cordier) PROVIDING FOR WATER COMMISSIONER DISTRIBUTION OF WATER BASED ON A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTIONS 85-5-101, 85-5-201, AND 85-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .

577

93 (House Bill No. 102; Jacobson) REVISING SPECIAL PURPOSE DISTRICT LAWS; MODIFYING THE PROTEST PROVISIONS FOR CITY PROPERTIES INCLUDED IN A PROPOSED RURAL SPECIAL IMPROVEMENT DISTRICT; MODIFYING THE PROTEST PROVISIONS FOR PROPERTIES OUTSIDE A CITY THAT ARE INCLUDED IN A PROPOSED SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE NOTICE REQUIREMENTS FOR A RESOLUTION OF INTENTION TO CREATE A SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE PROTEST AGAINST PROPOSED WORK OR AGAINST THE EXTENT OR CREATION OF A SPECIAL IMPROVEMENT DISTRICT; MODIFYING A CITY COUNCIL'S AUTHORITY TO ORDER IMPROVEMENTS; MODIFYING VOTER QUALIFICATIONS TO VOTE ON THE CREATION OF A COUNTY WATER OR SEWER DISTRICT; ELIMINATING THE PROPERTY TAX LIMITATIONS FOR IRRIGATION DISTRICT BONDING; PROHIBITING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT OR BOARD OF COUNTY COMMISSIONERS ON BEHALF OF AN



IRRIGATION DISTRICT FROM LEVYING PROPERTY TAXES AS PROVIDED IN TITLE 15, CHAPTER 6, FOR IRRIGATION DISTRICT PURPOSES; AMENDING SECTIONS 7-12-2102, 7-12-4102, 7-12-4106, 7-12-4110, 7-12-4114, 7-13-2212, 7-13-2328, 85-7-206, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, AND 85-7-2136, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 579

94 (House Bill No. 128; Becker) ELIMINATING OUTMODED REQUIREMENTS FOR PRIOR REVIEW OR APPROVAL BY THE ATTORNEY GENERAL OF LOCAL GOVERNMENT AND SCHOOL BOND ACTIONS, LAW ENFORCEMENT MUTUAL AID AGREEMENTS, SPECIAL EDUCATION COOPERATIVE CONTRACTS, AND TEXTBOOK SURETY BONDS; AMENDING SECTIONS 7-7-104, 7-7-2213, 7-7-4212, 20-7-454, 20-7-455, 20-7-457, 20-7-604, 20-9-327, 20-9-461, 20-9-464, 20-9-466, 20-15-404, AND 44-11-310, MCA; AND REPEALING SECTIONS 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, AND 44-11-309, MCA . . . . . 588

95 (House Bill No. 132; Sesso) RELATING TO STATE PUBLICATIONS; MODIFYING THE DEFINITIONS OF “STATE AGENCY” AND “STATE PUBLICATION”; DEFINING “DEPOSITORY LIBRARY”; PROVIDING FOR THE ADMINISTRATION OF THE STATE PUBLICATIONS DEPOSITORY LIBRARY PROGRAM; MODIFYING THE NOTIFICATION AND AVAILABILITY REQUIREMENTS FOR STATE PUBLICATIONS; MAINTAINING PERMANENT PUBLIC ACCESS TO STATE PUBLICATIONS; ADDING THE MONTANA UNIVERSITY SYSTEM TO THE LIST OF PUBLICATION EXEMPTIONS; AMENDING SECTIONS 1-11-301, 22-1-211, 22-1-212, 22-1-213, AND 22-1-218, MCA; AND REPEALING SECTIONS 22-1-214, 22-1-215, 22-1-216, AND 22-1-217, MCA . . . . . 594

96 (House Bill No. 140; Ingraham) PROVIDING THAT IF A DECLARATION FOR NOMINATION IS FILED ELECTRONICALLY WITH THE SECRETARY OF STATE, THE DECLARATION DOES NOT HAVE TO BE ACKNOWLEDGED; AND AMENDING SECTION 13-10-201, MCA . . . . . 597

97 (House Bill No. 144; Becker) REVISING THE WASTE MANAGEMENT LAWS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENJOIN THE TRANSPORTATION OF SOLID WASTE IF THERE IS A VIOLATION; REVISING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS UNDER THE INFECTIOUS WASTE MANAGEMENT ACT; MAKING A VIOLATION OF THE INFECTIOUS WASTE MANAGEMENT ACT A MISDEMEANOR; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES GOVERNING THE INSPECTION AND REGULATION OF THE TRANSPORTATION AND MANAGEMENT OF INFECTIOUS WASTE; AND AMENDING SECTIONS 75-10-231, 75-10-1003, 75-10-1004, AND 75-10-1006, MCA . . . . . 598

98 (House Bill No. 145; Sonju) GENERALLY REVISING BUILDING CODE ENFORCEMENT PROVISIONS FOR COUNTIES, CITIES, AND TOWNS CERTIFIED TO ENFORCE BUILDING CODES; REVISING PROVISIONS GOVERNING INSPECTIONS BY CERTIFIED COUNTIES, CITIES, AND TOWNS OF BUILDINGS OUTSIDE THEIR JURISDICTION; AMENDING SECTION 50-60-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 601

99 (House Bill No. 149; Jopek) INCREASING THE AMOUNT OF HOMESTEAD EXEMPT FROM EXECUTION OR FORCED SALE FROM \$100,000 TO \$250,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 603

- 100 (*House Bill No. 176; Wilmer*) SUBSTITUTING THE TERM “ETHANOL-BLENDED GASOLINE” FOR “GASOHOL”; AMENDING AND MAKING UNIFORM DEFINITIONS OF AND REFERENCES TO ETHANOL AND RELATED TERMS; REMOVING THE PERCENTAGE OF ETHANOL IN GASOLINE THAT STATE EMPLOYEES ARE REQUESTED TO USE WHEN FUELING STATE VEHICLES; AMENDING SECTIONS 2-17-414, 15-6-135, 15-70-201, 15-70-202, 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-302, AND 75-11-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 604
- 101 (*House Bill No. 190; Thomas*) GENERALLY REVISING THE LAWS RELATING TO CARD GAMES; AMENDING SECTIONS 23-5-112, 23-5-306, 23-5-308, 23-5-313, 23-5-317, AND 23-5-710, MCA; REPEALING SECTION 23-5-319, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 619
- 102 (*House Bill No. 193; Nooney*) AUTHORIZING A PERSON WHO IS CERTIFIED AS DISABLED AND CARRIES A PERMIT TO HUNT FROM A VEHICLE THAT IS ISSUED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO HUNT FROM AN OFF-HIGHWAY VEHICLE OR SNOWMOBILE IN AREAS WHERE HUNTING AND MOTORIZED USE ARE PERMITTED, AS LONG AS THE OFF-HIGHWAY VEHICLE OR SNOWMOBILE IS PROPERLY MARKED; AMENDING SECTIONS 87-2-803 AND 87-3-125, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 627
- 103 (*House Bill No. 244; Wiseman*) EXPANDING THE PROMOTIONAL ACTIVITIES THAT MAY BE CONDUCTED BY A REGULATED TELECOMMUNICATIONS SERVICE PROVIDER WITHOUT ADVANCE APPROVAL OF THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 630
- 104 (*House Bill No. 286; Augare*) REVISING INCENTIVES UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM TO ASSIST HIGH-POVERTY COUNTIES IN WORKFORCE TRAINING AND OTHER ECONOMIC DEVELOPMENT OPPORTUNITIES; AMENDING SECTIONS 90-1-201, 90-1-202, AND 90-1-204, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 632
- 105 (*House Bill No. 332; Thomas*) ADOPTING NATIONALLY ACCEPTED NOISE LIMITS FOR MOTORCYCLES AND QUADRICYCLES; REQUIRING MOTORCYCLES AND QUADRICYCLES TO BE EQUIPPED WITH SPARK ARRESTERS; AND AMENDING SECTION 61-9-418, MCA . . . . . 634
- 106 (*House Bill No. 347; Boggio*) INCREASING THE AMOUNTS FOR WHICH A CONTRACT IS NOT REQUIRED FOR BUILDING, FURNISHING, REPAIRING, OR OTHER WORK FOR THE BENEFIT OF A SCHOOL DISTRICT OR PURCHASING OF SUPPLIES FOR A SCHOOL DISTRICT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 635
- 107 (*House Bill No. 378; Windy Boy*) CLARIFYING AND REVISING THE MAKEUP OF THE BOARD OF NURSING HOME ADMINISTRATORS; ESTABLISHING LEGISLATIVE FINDINGS AND PURPOSE FOR THE BOARD; AND AMENDING SECTION 2-15-1735, MCA. . . . . 637
- 108 (*House Bill No. 449; Pomnichowski*) TRANSFERRING BUPRENORPHINE FROM A SCHEDULE V DRUG TO A SCHEDULE III DRUG; AMENDING SECTIONS 50-32-226 AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 638

109 (*House Bill No. 531; Lambert*) ESTABLISHING THE WARRIOR TRAIL HIGHWAY ON U.S. HIGHWAY 212 FROM THE 510 EXIT AT INTERSTATE 90 TO THE U.S. HIGHWAY 212 INTERSECTION WITH THE WYOMING BORDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 641

110 (*House Bill No. 623; Olson*) CLARIFYING THE NATURE OF PROPERTY TAX LIEN SALES; CORRECTING TERMINOLOGY TO ENSURE THAT SALES AND SALES CERTIFICATES REFLECT THAT WHAT IS SOLD UPON NONPAYMENT OF PROPERTY TAXES IS A LIEN UPON THE PROPERTY; PROVIDING THAT PROPERTY TAX LIEN SALES ARE CONDUCTED AT A COUNTY TREASURER'S OFFICE; AMENDING SECTIONS 7-2-2722, 7-6-4423, 15-16-101, 15-17-121, 15-17-122, 15-17-124, 15-17-131, 15-17-211, 15-17-212, 15-17-213, 15-17-214, 15-17-317, 15-17-321, 15-17-323, 15-17-324, 15-17-325, 15-17-326, 15-18-111, 15-18-113, 15-18-114, 15-18-211, 15-18-212, 15-18-213, 15-18-214, 15-18-215, 15-18-217, 15-18-218, 39-3-501, 85-7-2136, 85-7-2152, 85-7-2157, 85-7-2158, 85-7-2159, 85-7-2162, 85-7-2163, AND 85-8-601, MCA . . . . . 642

111 (*House Bill No. 662; Villa*) CLARIFYING WHEN AN EXEMPTION FROM REVIEW UNDER LAWS GOVERNING SANITATION IN SUBDIVISIONS MAY APPLY TO A REMAINDER OF AN ORIGINAL TRACT; AMENDING SECTION 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 663

112 (*Senate Bill No. 21; Larson*) AUTHORIZING COUNTIES TO ESTABLISH AND FUND VETERANS' CEMETERIES. . . . . 665

113 (*Senate Bill No. 88; Hawks*) EXTENDING INDEFINITELY THE ALLOCATION OF LODGING FACILITY USE TAX TO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REPEALING SECTION 3, CHAPTER 469, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 665

114 (*Senate Bill No. 237; Brueggeman*) ALLOWING PNEUMATIC SNOW TIRES WITH RETRACTABLE STUDS TO BE USED YEAR ROUND; AND AMENDING SECTION 61-9-406, MCA. . . . . 665

115 (*House Bill No. 664; Keane*) ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER CONTROLLED BURNING AND LOGGING AS METHODS TO ADDRESS FOREST INSECT PEST INFESTATIONS OR TREE DISEASES; AMENDING SECTION 76-13-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 667

116 (*Senate Bill No. 45; Weinberg*) REVISING THE PROVISIONS FOR BEHAVIORAL HEALTH INPATIENT FACILITIES; PROVIDING FOR LICENSURE; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-21-102, 53-21-129, 53-21-193, AND 53-21-194, MCA. . . . . 668

117 (*Senate Bill No. 108; Cocchiarella*) GENERALLY REVISING WORKERS' COMPENSATION LAW; REQUIRING INSURERS TO NOTIFY THE DEPARTMENT OF LABOR AND INDUSTRY OF CHANGES IN THIRD-PARTY CLAIMS EXAMINERS; DEPOSITING PENALTY FEES FOR FAILURE TO NOTIFY IN THE WORKERS' COMPENSATION ADMINISTRATION FUND; MODIFYING DISPUTE RESOLUTION PROCEDURES PERTAINING TO INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING ANNUAL FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED

BY RULE; REVISING REIMBURSEMENT AMOUNTS FOR DOMICILIARY CARE PROVIDED BY A FAMILY MEMBER; PROVIDING THAT INTEREST ACCRUES ON AMOUNTS NOT PAID FROM SECURITY DEPOSITS WHEN PAYMENT IS DEMANDED BY THE DEPARTMENT; CLARIFYING THAT THE PENALTY FOR FAILURE TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT MAY BE ASSESSED FOR EACH INSTANCE OF FAILURE TO REPORT; PROVIDING GUIDELINES FOR DETERMINING WHEN AN INSURER IS IMPAIRED; REQUIRING SECURITY FROM PLAN NO. 2 INSURERS TO COVER POTENTIAL LIABILITY; AMENDING SECTIONS 39-71-107, 39-71-201, 39-71-415, 39-71-417, 39-71-418, 39-71-704, 39-71-727, 39-71-1107, 39-71-2106, 39-71-2201, 39-71-2204, 39-71-2205, AND 39-71-2337, MCA; REPEALING SECTION 39-71-2208, MCA; AND PROVIDING AN EFFECTIVE DATE 672

118 (*Senate Bill No. 319; Cocchiarella*) ESTABLISHING, WITH RESPECT TO REAL ESTATE TRANSACTIONS, WHEN A SELLER AGENT OR BUYER AGENT MAY REPRESENT MORE THAN ONE SELLER OR MORE THAN ONE BUYER; MODIFYING CONFIDENTIALITY REQUIREMENTS OWED TO A PRINCIPAL UPON TERMINATION OF THE AGENCY RELATIONSHIP; AMENDING SECTION 37-51-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 688

119 (*Senate Bill No. 323; Laslovich*) PROVIDING THAT A CERTIFICATE OF PUBLIC ADVANTAGE MAY NOT BE ISSUED FOR A TERM IN EXCESS OF 10 YEARS AND MUST TERMINATE NO LATER THAN 10 YEARS AFTER THE DATE OF ISSUANCE; REQUIRING A PRIOR CERTIFICATE HOLDER TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE FOR 2 YEARS FOLLOWING THE TERMINATION OF A CERTIFICATE OF PUBLIC ADVANTAGE; AMENDING SECTION 50-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 691

120 (*House Bill No. 260; Reinhart*) REVISING THE LAWS RELATING TO THE STUDENT REGENT; LIMITING THE STUDENT REGENT TO A 1-YEAR TERM; ALLOWING THE STUDENT REGENT TO BE REAPPOINTED IN THE SAME MANNER AS AN INITIAL APPOINTMENT; AMENDING SECTION 2-15-1508, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 692

121 (*House Bill No. 22; McAlpin*) ELIMINATING A PROVISION FOR MAKING REIMBURSEMENTS TO LOCAL GOVERNMENTS FOR THE FEE IN LIEU OF TAX ON CERTAIN VEHICLES THAT ARE MADE UNDER ANOTHER SECTION OF LAW; AMENDING SECTION 17-7-502, MCA; REPEALING SECTION 15-1-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 693

122 (*House Bill No. 64; Clark*) REVISING THE DEFINITION OF "SERIOUSLY DEVELOPMENTALLY DISABLED" TO REMOVE TOTAL CARE LANGUAGE FOR THE PURPOSES OF COMMITMENT TO RESIDENTIAL FACILITIES; AND AMENDING SECTION 53-20-102, MCA. . . . . 695

123 (*House Bill No. 98; Franklin*) ESTABLISHING A CHILDREN'S SYSTEM OF CARE ACCOUNT TO REDUCE OUT-OF-HOME PLACEMENTS OF HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; AUTHORIZING USE OF STATE FUNDS APPROPRIATED FOR MEDICAID SERVICES; REQUIRING A REPORT; AMENDING SECTIONS 52-2-301 AND 52-2-308, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 696

TITLE CONTENTS

124 (*House Bill No. 105; Windy Boy*) REVISING LAWS ON TRAINING OF STATE AGENCY MANAGERS AND STATE EMPLOYEES ON TRIBAL ISSUES AND CONCERNS; REQUIRING TRAINING TO BE PROVIDED BY THE GOVERNOR'S OFFICE; AMENDING SECTION 2-15-143, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 698

125 (*House Bill No. 118; Henry*) ALLOWING THE DISPENSING OF CERTAIN CONTRACEPTIVES BY A REGISTERED NURSE EMPLOYED BY A FAMILY PLANNING CLINIC UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-2-104, 37-7-103, AND 50-31-307, MCA . . . . . 699

126 (*House Bill No. 120; Henry*) REVISING THE LAWS PERTAINING TO DAY-CARE PROVIDERS; EXEMPTING CERTAIN DAY-CARE PROVIDERS FROM MANDATORY ANNUAL UNANNOUNCED VISITS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REVISING THE PAYMENT RATE FOR ELIGIBLE CHILDREN; AMENDING SECTIONS 52-2-713 AND 52-2-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 701

127 (*House Bill No. 124; French*) PROVIDING A TIME LIMIT ON CONTRACTS FOR STATE EMPLOYEE GROUP BENEFIT PLANS; AMENDING SECTIONS 2-18-811 AND 18-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 702

128 (*House Bill No. 129; Gallik*) GENERALLY REVISING PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; CLARIFYING BENEFITS; CLARIFYING GUARANTEED ANNUAL BENEFIT ADJUSTMENTS IN REGARD TO A DISABILITY RETIREMENT BENEFIT AND IN REGARD TO NONRETROACTIVE PAYMENT; CLARIFYING SERVICE CREDIT PURCHASE FOR CERTAIN EMPLOYEES IN HIGHER EDUCATION; CLARIFYING THE ELIGIBILITY OF INDIVIDUALS APPOINTED TO CERTAIN ELECTED OFFICES TO PARTICIPATE IN THE RETIREMENT SYSTEMS; CLARIFYING THAT SERVICE CREDIT FOR RETIREMENT MAY ACCRUE FOR VARIOUS EMPLOYER ARRANGEMENTS AND CONTRACTS; PROSPECTIVELY ASSIGNING MOTOR VEHICLE INSPECTORS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM RATHER THAN TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; REVISING DEFINITIONS IN REGARD TO RETIREMENT SYSTEMS; ELIMINATING THE AD HOC COST-OF-LIVING INCREASE FOR SOME RETIREES OR MEMBERS' BENEFICIARIES OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-602, 19-2-715, 19-2-907, 19-2-908, 19-2-909, 19-3-401, 19-3-412, 19-3-510, 19-3-1105, 19-3-1106, 19-3-1202, 19-3-1203, 19-3-1204, 19-3-2111, 19-3-2112, 19-3-2113, 19-6-707, 19-7-101, 19-7-312, 19-7-1101, 19-8-301, 19-8-302, 19-9-1202, 19-9-1205, 19-9-1206, 19-17-102, 19-17-108, 19-17-401, 19-17-402, AND 19-17-502, MCA; AND REPEALING SECTION 19-8-1110, MCA. . . . . 704

129 (*House Bill No. 157; Caferro*) REVISING EXCEPTIONS TO THE LIMIT ON THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM ADMINISTRATIVE EXPENSES; CLARIFYING THAT FUNDS DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM MAY BE USED TO PAY HEALTH CARE CLAIMS; AMENDING SECTIONS 53-4-1007 AND 53-4-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE . . . . . 724

- 130 *(House Bill No. 177; Boggio)* REPEALING THE MONTANA ELECTRONIC TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS ACT; AMENDING SECTIONS 30-18-102, 30-18-118, AND 61-11-503, MCA; AND REPEALING SECTIONS 2-20-101, 2-20-102, 2-20-103, 2-20-104, 2-20-105, 2-20-106, 2-20-107, 2-20-108, 2-20-109, 2-20-110, AND 2-20-111, MCA . . . . .

726
- 131 *(House Bill No. 207; Ingraham)* REVISING WHEN COUNTY COMMISSIONERS AND OTHER COUNTY ELECTED OFFICIALS SHALL TAKE THE OATH OF OFFICE; AND AMENDING SECTIONS 7-4-2105 AND 7-4-2205, MCA . . . . .

729
- 132 *(House Bill No. 284; Augare)* AUTHORIZING THE RENOVATION OF THE HISTORIC BUILDING AT THE MORONY TOWNSITE IN GIANT SPRINGS STATE PARK; GRANTING AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER AN AGREEMENT WITH THE LITTLE SHELL CHIPPEWA TRIBE FOR MAINTENANCE AND SECURITY AT THE PARK IN EXCHANGE FOR THE TRIBE'S USE OF THE PARK AND RENOVATION AND USE OF THE BUILDING; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE . . . . .

729
- 133 *(House Bill No. 341; Gallik)* REVISING THE LAWS RELATING TO THE PREPARATION OF JUROR LISTS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 46-17-202, AND 61-5-127, MCA; REPEALING SECTION 3-15-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .

730
- 134 *(House Bill No. 397; Ward)* PROVIDING THAT ANY PERSONAL PROPERTY THAT IS IN A MOTOR VEHICLE THAT IS SUBJECT TO A LIEN FOR SERVICES, TOWING, OR STORAGE IS ALSO SUBJECT TO THE LIEN, EXCEPT FOR CERTAIN ITEMS SPECIFICALLY EXEMPTED FROM THE LIEN; AND AMENDING SECTION 71-3-1201, MCA. . . . .

734
- 135 *(House Bill No. 412; Ebinger)* ALLOWING PUBLIC BENEFIT CORPORATIONS TO MAKE TRANSACTIONS WITH MEMBERS, DIRECTORS, OR OFFICERS IF IN CONFORMITY WITH ITS CHARITABLE PURPOSES UPON CERTAIN CONDITIONS; AND AMENDING SECTION 35-2-1401, MCA . . . . .

735
- 136 *(House Bill No. 497; Pomnichowski)* PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY AN ADVANCED PRACTICE REGISTERED NURSE OR A LICENSED PHYSICIAN ASSISTANT AS WELL AS A LICENSED PHYSICIAN; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .

736
- 137 *(House Bill No. 770; Pomnichowski)* REVISING PROVISIONS RELATING TO CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF HUNTING FROM A VEHICLE; PROVIDING THAT THE BOARD OF MEDICAL EXAMINERS RATHER THAN A VOLUNTARY BOARD REVIEW DISABILITY CERTIFICATION DISAGREEMENTS; PROVIDING THAT WHEN A PERSON OR THE DEPARTMENT DISAGREES WITH A DETERMINATION OF ELIGIBILITY, A REQUEST MAY BE MADE FOR A REVIEW BY THE BOARD OF MEDICAL EXAMINERS; AMENDING SECTIONS 37-3-203 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .

738
- 138 *(Senate Bill No. 116; Brueggeman)* PROVIDING IDENTITY THEFT PROTECTION; ALLOWING CONSUMERS TO LIMIT ACCESS TO THEIR OWN CREDIT REPORTS; REQUIRING IMPLEMENTATION

PROCEDURES FOR CONSUMER REPORTING AGENCIES; PROVIDING FOR TEMPORARY LIFTING OF SECURITY FREEZES; REQUIRING NOTICES TO CONSUMERS ABOUT THE OPTION FOR A SECURITY FREEZE; PROVIDING EXEMPTIONS AND EXCEPTIONS; SETTING FEES; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE . . . . . 741

139 (*Senate Bill No. 119; Moss*) CLARIFYING THE EXCHANGE OF YOUTH COURT RECORD INFORMATION WITH CERTAIN FACILITIES IN WHICH A YOUTH IS PLACED; AND AMENDING SECTION 41-5-216, MCA. . . . . 748

140 (*Senate Bill No. 124; Harrington*) PROVIDING FOR THE COSTS OF THE MENTAL HEALTH EXAMINATION AND COMMITMENT OF A CRIMINAL DEFENDANT; PROVIDING THAT COSTS FOR THE EXAMINATION, CARE, CUSTODY, AND TREATMENT OF A CRIMINAL DEFENDANT FOR WHICH THE LEGISLATURE HAS MADE A GENERAL FUND APPROPRIATION MAY NOT BE CHARGED TO THE OFFICE OF COURT ADMINISTRATOR OR THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTIONS 3-5-901, 46-14-202, AND 46-14-221, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 750

141 (*Senate Bill No. 141; Laslovich*) CLARIFYING WHEN PHOTOGRAPHS AND FINGERPRINTS TAKEN IN CRIMINAL CASES MUST BE RETURNED TO THE INDIVIDUAL FROM WHOM THEY WERE TAKEN; AND AMENDING SECTION 44-5-202, MCA. . . . . 754

142 (*Senate Bill No. 178; Lewis*) REMOVING THE REFERENCE TO MILLTOWN DAM IN THE DEFINITION OF THE UPPER CLARK FORK RIVER BASIN . . . . . 755

143 (*Senate Bill No. 208; M. Tropila*) INSTRUCTING MOTORISTS TO MAKE A COMPLETE STOP, AS IF AT A STOP SIGN, WHEN A TRAFFIC LIGHT IS INOPERATIVE . . . . . 756

144 (*Senate Bill No. 239; Balyeat*) ALLOWING ACTIVE DUTY MEMBERS OF THE UNITED STATES ARMED FORCES TO RENEW THEIR DRIVER'S LICENSE AT ANY TIME TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; ALLOWING FOR A MONTANA DRIVER'S LICENSE TO BE ISSUED TO A MEMBER OF THE UNITED STATES ARMED SERVICES TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; AND AMENDING SECTION 61-5-104, MCA . . . . . 756

145 (*Senate Bill No. 322; Brueggeman*) REVISING THE LAWS RELATING TO DRIVERS INVOLVED IN HIT-AND-RUN ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES; INCREASING THE PENALTY FROM A MISDEMEANOR TO A FELONY AND REQUIRING REVOCATION OF A LICENSE OR PERMIT TO DRIVE FOR A PERIOD OF 2 YEARS IN CERTAIN CASES; AND AMENDING SECTIONS 61-5-205 AND 61-7-103, MCA . . . . . 758

146 (*Senate Bill No. 328; Steinbeisser*) ESTABLISHING AN OPTIONAL PROCUREMENT EXCEPTION APPLICABLE TO THE PURCHASE OF MONTANA-PRODUCED FOOD PRODUCTS BY GOVERNMENTAL BODIES; CLARIFYING TERMINOLOGY; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 759

147 (*Senate Bill No. 385; Cobb*) CRIMINALIZING SUBJECTING ANOTHER TO INVOLUNTARY SERVITUDE AND TRAFFICKING IN PERSONS

	FOR INVOLUNTARY SERVITUDE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	761
148	<i>(Senate Bill No. 479; Elliott)</i> REGULATING THE DESCRIPTION OF MONTANA HUCKLEBERRY PRODUCTS; PROVIDING PENALTIES FOR MISLABELING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	764
149	<i>(Senate Bill No. 485; Brueggeman)</i> REVISING THE PROHIBITION ON THE DISTRIBUTION OF MAILING LISTS FOR CERTAIN OCCUPATIONS AND PROFESSIONS REQUIRING LICENSES; AND AMENDING SECTION 2-6-109, MCA . . . . .	765
150	<i>(House Bill No. 92; Franklin)</i> MODERNIZING PUBLIC HEALTH STATUTES; PROVIDING A PUBLIC HEALTH POLICY STATEMENT; REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, LOCAL BOARDS OF HEALTH, AND LOCAL HEALTH OFFICERS; ENCOURAGING GREATER COLLABORATION AMONG AND BETWEEN ENTITIES IN THE PUBLIC HEALTH SYSTEM; AMENDING SECTIONS 50-1-101, 50-1-202, 50-2-116, 50-2-118, 50-2-130, 50-48-102, 50-53-102, 75-5-305, 76-4-125, AND 76-4-133, MCA; AND REPEALING SECTION 50-2-101, MCA. . . . .	767
151	<i>(House Bill No. 400; Villa)</i> REQUIRING A BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO APPOINT ONE OF ITS MEMBERS OR ASSOCIATE MEMBERS TO A CITY-COUNTY PLANNING BOARD; PROVIDING THAT THE APPOINTMENT IS SUBJECT TO APPROVAL OF THE CITY-COUNTY PLANNING BOARD; PROVIDING THAT AN ASSOCIATE MEMBER OF A CONSERVATION DISTRICT DESIGNATED BY THE GOVERNING BOARD MAY BE APPOINTED TO A COUNTY PLANNING BOARD; AMENDING SECTIONS 76-1-201 AND 76-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	780
152	<i>(House Bill No. 409; Sinrud)</i> PROHIBITING CERTAIN UNFAIR PRACTICES BY MOTORSPORTS VEHICLE MANUFACTURERS; DEFINING "MOTORSPORTS VEHICLE"; AND PROVIDING FOR INJUNCTIVE RELIEF AND DAMAGES . . . . .	781
153	<i>(House Bill No. 503; Gallik)</i> MAKING PERMANENT THE PROVISIONS ALLOWING CERTAIN AGENCIES AND TECHNICIANS TO BE CERTIFIED TO PERFORM EUTHANASIA ON ANIMALS; AND REPEALING SECTION 11, CHAPTER 60, LAWS OF 2003. . . . .	785
154	<i>(House Bill No. 510; Stahl)</i> ALLOWING A CITY COUNCIL OR A BOARD OF COUNTY COMMISSIONERS TO ASSESS THE COST OF A SPECIAL IMPROVEMENT LIGHTING DISTRICT EQUALLY AGAINST EACH LOT OR PARCEL IN THE DISTRICT; AND AMENDING SECTIONS 7-12-2202 AND 7-12-4323, MCA. . . . .	785
155	<i>(House Bill No. 521; Arntzen)</i> REVISING THE DEFINITION OF "OCCUPIED STRUCTURE" IN THE CRIMINAL LAWS TO INCLUDE OUTBUILDINGS ADJACENT TO OR IN CLOSE PROXIMITY TO OCCUPIED STRUCTURES; AND AMENDING SECTION 45-2-101, MCA . . . . .	787
156	<i>(House Bill No. 555; Grinde)</i> REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE INFORMATION IN THE HOUSEHOLD HAZARDOUS WASTE PUBLIC EDUCATION PROGRAM ABOUT RECYCLING OR THE SAFE DISPOSAL OF ELECTRONIC WASTE; AND AMENDING SECTION 75-10-215, MCA. . . . .	795
157	<i>(House Bill No. 570; Cohenour)</i> EXPANDING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT; AUTHORIZING THE USE OF THE FEDERAL WRITE-IN ABSENTEE . . . . .	



BALLOT FOR ANY ELECTION; CLARIFYING REGULAR ABSENTEE BALLOT AND FEDERAL WRITE-IN ABSENTEE BALLOT PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-21-103, 13-21-201, 13-21-202, 13-21-205, 13-21-206, AND 13-21-210, MCA; AND REPEALING SECTION 13-21-204, MCA. . . . . 795

158 *(House Bill No. 579; Olson)* CLARIFYING THE LAWS RELATING TO THE DISBURSEMENT OF SURPLUS FUNDS FROM A TRUSTEE'S SALE; AND AMENDING SECTION 71-1-316, MCA. . . . . 798

159 *(House Bill No. 596; Sands)* INCREASING THE REPAYMENT PERIOD FOR ASSESSMENTS IMPOSED AGAINST OWNERS OF LAND FOR THE CONSTRUCTION OF CERTAIN SIDEWALKS, CURBS, GUTTERS, OR ALLEY APPROACHES IN CITIES OR TOWNS; AMENDING SECTION 7-14-4110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 798

160 *(House Bill No. 703; Ripley)* ESTABLISHING APPLICATION REQUIREMENTS FOR AN EASEMENT ON STATE LAND FOR A REGIONAL WATER AUTHORITY; AND AMENDING SECTION 77-2-102, MCA . . . . . 799

161 *(House Bill No. 717; Stahl)* RATIFYING THE UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE, BOWDOIN NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 800

162 *(House Bill No. 724; Furey)* PROVIDING REQUIREMENTS FOR SERVICE CONTRACTS AS PART OF CERTAIN BUSINESS ARRANGEMENTS; REQUIRING INSURANCE OF SERVICE CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 811

163 *(House Bill No. 795; Hands)* ALLOWING SPECIAL IMPROVEMENT DISTRICTS AND RURAL IMPROVEMENT DISTRICTS TO BE CREATED FOR ACQUISITION, CONSTRUCTION, OR RECONSTRUCTION OF LAND AND STRUCTURES FOR FIRE PROTECTION; AND AMENDING SECTION 7-12-4102, MCA . . . . . 815

164 *(House Bill No. 37; Reinhart)* DEFINING THE TERM "NOXIOUS WEEDS"; PROVIDING A NOTIFICATION PROCESS FOR NONCOMPLIANT WEED CONTROL ON STATE LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONTROL WEEDS ON STATE LANDS AND BILL FOR COSTS INCURRED; PROVIDING AN ADMINISTRATIVE HEARING PROCESS; GRANTING RULEMAKING AUTHORITY; AND AMENDING SECTION 77-1-101, MCA. . . . . 817

165 *(House Bill No. 57; Franklin)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURCHASE LIABILITY INSURANCE FOR FOSTER PARENTS PROVIDING FOSTER CARE OR THERAPEUTIC FOSTER CARE FOR A YOUTH UNDER 18 YEARS OF AGE PLACED BY A STATE AGENCY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE . . . . . 820

166 *(House Bill No. 91; Clark)* REVISING LAWS CONCERNING CHILD ABUSE AND NEGLECT TO COMPLY WITH FEDERAL LAW ALLOWING AUDIO AND VIDEO TESTIMONY; CLARIFYING REQUIREMENTS CONCERNING NOTICE BY CERTAIN PROFESSIONALS OF DRUG-AFFECTED INFANTS; AMENDING SECTIONS 41-3-115, 41-3-201, 41-3-205, 41-3-422, 41-3-423, 41-3-432, AND 41-3-445, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 821

167	( <i>House Bill No. 112; Arntzen</i> ) PRESCRIBING THE AUTHORITY AND DUTIES OF CERTAIN GOVERNMENTAL FIRE AGENCY FIRE CHIEFS; AND REPEALING SECTION 7-33-2313, MCA . . . . .	835
168	( <i>House Bill No. 166; Raser</i> ) REVISING ALTERNATIVE FUELS TAX LAWS; MODIFYING THE TAX CREDITS FOR PROPERTY USED FOR THE PRODUCTION, BLENDING, AND STORAGE OF BIODIESEL OR BIOLUBRICANT; ALLOWING CREDITS TO BE CARRIED FORWARD FOR 7 YEARS; EXTENDING CREDITS TO COVER EXPENSES INCURRED IN CERTAIN TIME PERIODS; EXTENDING THE DURATION OF THE CREDITS; AMENDING SECTIONS 15-32-701, 15-32-702, AND 15-32-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .	837
169	( <i>House Bill No. 198; W. Jones</i> ) EXPANDING THE DENTAL CARE BENEFITS OF THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1005, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . .	842
170	( <i>House Bill No. 206; Ingraham</i> ) CLARIFYING THAT A MILL LEVY ELECTION PROPOSAL MUST SPECIFY EITHER THE DOLLAR AMOUNT TO BE RAISED OR THE NUMBER OF MILLS TO BE LEVIED AND WHETHER THE MILL LEVY IS PERMANENT; CLARIFYING THAT THE GOVERNING BODY MAY REDUCE THE LEVY WITHOUT LOSING THE AUTHORITY TO IMPOSE UP TO THE MAXIMUM APPROVED; AND AMENDING SECTION 15-10-425, MCA . . . . .	843
171	( <i>House Bill No. 253; Ross</i> ) REMOVING THE REQUIREMENT THAT A BOARD OF COUNTY COMMISSIONERS HOLD AN ELECTION IF THE COST OF CONSTRUCTION OF A BRIDGE IN A MUNICIPALITY EXCEEDS \$10,000; AND REPEALING SECTION 7-14-2205, MCA . . . . .	844
172	( <i>House Bill No. 265; Ebinger</i> ) CLARIFYING THAT AN ACTION OF A PLANNING BOARD IS NOT OFFICIAL UNLESS AUTHORIZED BY A MAJORITY OF THE QUORUM PRESENT AT THE MEETING; AMENDING SECTION 76-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	844
173	( <i>House Bill No. 363; Ward</i> ) REVISING SCHOOL DISTRICT GENERAL FUND BUDGET LIMITATIONS; ALLOWING A SCHOOL DISTRICT TO ADOPT A GENERAL FUND BUDGET IN AN AMOUNT UP TO THE MAXIMUM GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET; ALLOWING THE ADDITION OF INCREASES IN STATE FUNDING TO A SCHOOL DISTRICT'S GENERAL FUND BUDGET FOR THE PRIOR YEAR; REVISING ELECTION PROVISIONS FOR FINANCING OF THE GENERAL FUND LEVY REQUIREMENT; AMENDING SECTIONS 20-9-141, 20-9-308, AND 20-9-353, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .	844
174	( <i>House Bill No. 427; Bergren</i> ) REVISING NATURAL GAS UNIVERSAL SYSTEM BENEFITS LAWS; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS"; CLARIFYING THAT THE PUBLIC SERVICE COMMISSION HAS ONGOING OVERSIGHT FOR NATURAL GAS UTILITY UNIVERSAL SYSTEM BENEFIT PROGRAMS; PROVIDING THAT A UNIVERSAL SYSTEM BENEFITS CHARGE MAY BE ESTABLISHED AND REVISED THROUGH A TRACKING PROCEDURE; CLARIFYING THAT A NATURAL GAS UTILITY'S FUNDING REQUIREMENT IS A MINIMUM FUNDING REQUIREMENT; REQUIRING AN ANNUAL REPORT; AMENDING SECTIONS 69-3-1402 AND 69-3-1408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	851

TITLE CONTENTS

175 (*House Bill No. 437; Gallik*) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCLUDE A DISPUTE RESOLUTION CLAUSE IN ITS CONTRACTS WITH THIRD-PARTY PROVIDERS OF HUMAN SERVICES; AND PROVIDING AN EFFECTIVE DATE . . . . . 854

176 (*House Bill No. 532; Jacobson*) REVISING LAWS GOVERNING STATE DUTY FOR THE MONTANA NATIONAL GUARD; CLARIFYING THAT NATIONAL GUARD RESOURCES MAY BE USED TO PREPARE FOR STATE ACTIVE DUTY ORDERED BY THE GOVERNOR; PROVIDING A DEFINITION; AMENDING STATE PAY OF NATIONAL GUARD MEMBERS; AMENDING SECTIONS 10-1-501 AND 10-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 854

177 (*House Bill No. 756; L. Jones*) ELIMINATING THE REQUIREMENT THAT AN APPLICANT MUST CREATE 10 NEW JOBS IN ORDER TO BE ELIGIBLE FOR A GRANT UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; AMENDING SECTION 39-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 855

178 (*House Bill No. 769; Lake*) REQUIRING MANDATORY REGISTRATION AND LICENSURE OF ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; ALLOWING FOR PROVISIONAL LICENSING; PROVIDING FOR BACKGROUND INVESTIGATIONS OF CERTAIN EMPLOYEES AND MANAGERS AND ALLOWING FOR A WAIVER; DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES REGARDING PROGRAM CRITERIA; REQUIRING DEPARTMENT INSPECTION OF THE PROGRAMS FOR LICENSURE AND EVERY 3 YEARS; ALLOWING INSPECTIONS IN RESPONSE TO COMPLAINTS; PROVIDING PENALTIES AND NOTIFICATION PROCEDURES; REVISING DEFINITIONS; ESTABLISHING CRITERIA FOR ENSURING PUBLIC HEALTH AND SAFETY FOR PROGRAM PARTICIPANTS; REQUIRING PROOF OF INSURANCE; AMENDING SECTIONS 37-48-101, 37-48-102, AND 37-48-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 860

179 (*House Bill No. 786; Blasdel*) EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A BROKER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 865

180 (*House Bill No. 789; Campbell*) TREATING A TRIBAL IDENTIFICATION CARD IN A MANNER SIMILAR TO A STATE IDENTIFICATION CARD FOR PURPOSES OF CERTAIN STATE LAWS; AND AMENDING SECTIONS 16-3-322, 16-6-305, 30-14-1704, 33-19-321, 45-6-332, 45-8-206, 45-8-322, 61-3-101, 61-3-216, 61-5-206, 61-5-302, 87-2-106, AND 87-2-202, MCA. . . . . 869

181 (*House Bill No. 803; Himmelberger*) PROVIDING THAT THE INFORMATION AND COMMUNICATION PROGRAM OF THE BOARD OF VETERANS' AFFAIRS MAY INCLUDE INFORMATION RELATED TO DEPLETED URANIUM EXPOSURE; AMENDING SECTION 10-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 884

182 (*Senate Bill No. 60; Cobb*) REVISING AND CLARIFYING THE GOVERNOR'S ENERGY EMERGENCY AUTHORITY RELATED TO A PRICE OF ENERGY; AND AMENDING SECTIONS 10-3-312 AND 90-4-302, MCA . . . . . 885

183 (*Senate Bill No. 77; Laible*) REVISING LEGISLATIVE REPORTING REQUIREMENTS RELATED TO THE FUTURE FISHERIES

	IMPROVEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SUBMIT ITS DETAILED PROGRAM REPORT TO CERTAIN LEGISLATIVE COMMITTEES, TO INCLUDE SPECIFIC INFORMATION REGARDING PROGRESS AND PROJECTS RELATED TO THE RESTORATION OF NATIVE MONTANA FISH SPECIES, TO IDENTIFY ANY PROJECT THAT INVOLVES STREAM REMEDIATION FROM MINING ACTIVITIES, AND TO INCLUDE PARTICULAR FUNDING INFORMATION; AMENDING SECTION 87-1-272, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . .	887
184	( <i>Senate Bill No. 164; Gallus</i> ) CLARIFYING THE DISTINCTION BETWEEN THE POWERS AND DUTIES OF ASSIGNED COUNSEL AND A GUARDIAN AD LITEM IN PROCEEDINGS TO ADJUDICATE INCAPACITY AND TO PROTECT PROPERTY OF MINORS AND PERSONS UNDER DISABILITY; AMENDING SECTIONS 72-5-315 AND 72-5-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . .	888
185	( <i>Senate Bill No. 170; Perry</i> ) EXTENDING THE TERMINATION DATE OF THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003, AND SECTION 1, CHAPTER 23, LAWS OF 2005 . . . . .	890
186	( <i>Senate Bill No. 203; Balyeat</i> ) ALLOWING A COUNTY SHERIFF OR THE SHERIFF'S DESIGNEE TO AUTHORIZE THE PARTICIPATION OF CIVIL AIR PATROL CADETS IN SEARCH AND RESCUE OPERATIONS; AMENDING SECTION 7-32-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	891
187	( <i>Senate Bill No. 245; McGee</i> ) INCREASING THE DEBT LIMITS FOR COUNTIES, CONSOLIDATED MUNICIPALITIES, AND CITIES OR TOWNS; AMENDING SECTIONS 7-3-1321, 7-7-2101, 7-7-4201, 7-14-2524, AND 7-14-2525, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	891
188	( <i>Senate Bill No. 341; Lewis</i> ) REVISING GOVERNMENTAL PROCUREMENT PROCEDURES TO ALLOW FOR THE BIENNIAL SELECTION OF FIRMS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES; AND AMENDING SECTION 18-8-204, MCA. . . . .	893
189	( <i>Senate Bill No. 466; Cocchiarella</i> ) PROVIDING THAT ECONOMIC IMPACT STATEMENTS REQUESTED BY AN ADMINISTRATIVE RULE REVIEW COMMITTEE CONSIDER THE POTENTIAL IMPACT OF A RULE ON AFFECTED SMALL BUSINESSES; AND AMENDING SECTION 2-4-405, MCA. . . . .	894
190	( <i>Senate Bill No. 467; Cocchiarella</i> ) GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF INVESTMENTS; ADDING LEGISLATIVE LIAISONS TO THE BOARD; AMENDING SECTION 2-15-1808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	895
191	( <i>House Bill No. 242; Ripley</i> ) CHANGING THE DEADLINE FOR A WRITE-IN CANDIDATE TO FILE A DECLARATION OF INTENT; AMENDING SECTION 13-10-211, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . .	897
192	( <i>Senate Bill No. 225; Moss</i> ) ALLOWING SPECIAL SCHOOL ELECTIONS ON A DATE OTHER THAN THE REGULAR SCHOOL ELECTION DAY IN ORDER FOR THE ELECTORS TO CONSIDER A PROPOSITION REQUESTING ADDITIONAL FUNDING; AMENDING SECTION 20-20-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION . . . . .	898

193 *(Senate Bill No. 536; Perry)* PROVIDING THAT LOCAL GOVERNMENT ENTITIES, MUNICIPAL UTILITIES, OR COMPETITIVE ELECTRICITY SUPPLIERS MAY NOT USE EMINENT DOMAIN TO ACQUIRE EXISTING TELEPHONE OR ELECTRICAL ENERGY LINES AND APPURTENANT FACILITIES OWNED BY A PUBLIC UTILITY OR COOPERATIVE FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING ELECTRICITY OR PROVIDING TELECOMMUNICATIONS SERVICES; AMENDING SECTION 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 899

194 *(Senate Bill No. 291; Perry)* REVISING THE MORATORIUM ON NEW SCHOOL DISTRICTS TO ALLOW CREATION UNDER CERTAIN CIRCUMSTANCES OF A HIGH SCHOOL DISTRICT SOLELY FOR THE PURPOSE OF EXPANDING AN ELEMENTARY DISTRICT INTO A K-12 SCHOOL DISTRICT; PROVIDING FOR THE DISPOSITION OF DISTRICT BONDED INDEBTEDNESS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING PROCEDURES FOR CREATION OF A HIGH SCHOOL DISTRICT BY TRUSTEE RESOLUTION; AMENDING SECTIONS 20-6-104, 20-9-366, 20-9-439, AND 20-9-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 901

195 *(House Bill No. 35; Keane)* PROVIDING ASSISTANCE TO VICTIMS OF IDENTITY THEFT; CLARIFYING THE PROCESS FOR LAW ENFORCEMENT IN RELATION TO IDENTITY THEFT PASSPORTS; REQUIRING LAW ENFORCEMENT TO TAKE REPORTS IN IDENTITY THEFT CASES; EXPANDING THE APPLICATION OF THE IDENTITY THEFT PASSPORT PROGRAM TO ALL STATE RESIDENTS; PROVIDING THAT AN IDENTITY THEFT PASSPORT IS EQUIVALENT TO A POLICE REPORT OR INVESTIGATIVE REPORT; PROVIDING PENALTIES FOR FALSE REPORTS; REQUIRING CONSUMER REPORTING AGENCIES TO BLOCK INFORMATION RESULTING FROM IDENTITY THEFT; ALLOWING A VICTIM OF IDENTITY THEFT TO REQUEST THAT RECORDS OF ARREST OR CONVICTION BE EXPUNGED IN CERTAIN CIRCUMSTANCES; PROVIDING FOR INSURANCE PREMIUM REFUNDS UPON EXPUNGEMENT; AND AMENDING SECTION 46-24-220, MCA . . . . . 907

196 *(House Bill No. 99; Olson)* INCREASING FEES FOR LICENSING OF WEIGHING DEVICES; AND AMENDING SECTION 30-12-203, MCA . . . . . 910

197 *(House Bill No. 113; McChesney)* REVISING LIQUOR LICENSING LAWS TO ELIMINATE THE RESIDENCE REQUIREMENT FOR LIQUOR LICENSES AND TO ALLOW ALL ENTITIES TO OBTAIN A LIQUOR LICENSE; REQUIRING SUITABLE FUNDING SOURCES FOR INDIVIDUAL APPLICANTS; CLARIFYING OTHER APPLICATION REQUIREMENTS FOR OWNERS, STOCKHOLDERS, PARTNERSHIPS, AND MEMBERS OF DIFFERENT BUSINESS ENTITIES; AND AMENDING SECTION 16-4-401, MCA. . . . . 911

198 *(House Bill No. 287; Wiseman)* OPPOSING THE IMPLEMENTATION OF THE FEDERAL REAL ID ACT AND DIRECTING THE MONTANA DEPARTMENT OF JUSTICE NOT TO IMPLEMENT THE PROVISIONS OF THE FEDERAL ACT. . . . . 916

199 *(House Bill No. 348; Keane)* INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND INCREASING THE PROPORTIONAL AMOUNTS OF THE FEE THAT ARE USED FOR CERTAIN SNOWMOBILE TRAIL GROOMING AND ENFORCEMENT COSTS; AMENDING SECTION 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 918

200	<i>(House Bill No. 372; Ingraham)</i> ALLOWING A COUNTY TREASURER TO RECEIVE UP TO \$2,000 A YEAR IN ADDITION TO BASE SALARY; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	919
201	<i>(House Bill No. 587; Himmelberger)</i> CLARIFYING THAT COVERAGES SPECIFIED UNDER ONE POLICY OR UNDER MORE THAN ONE POLICY ISSUED BY THE SAME COMPANY MAY NOT BE ADDED TOGETHER IF THE PREMIUMS CHARGED FOR THE COVERAGE ACTUARIALLY REFLECT THE LIMITING OF COVERAGE SEPARATELY TO THE VEHICLES COVERED BY THE POLICY; AMENDING SECTION 33-23-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . .	921
202	<i>(House Bill No. 617; Sinrud)</i> REVISING THE FILING REQUIREMENTS FOR CHILD SUPPORT DEBTS; REQUIRING THAT NOTICE OF A SUPPORT DEBT BE FILED WITH THE CLERK OF THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE MOST RECENT SUPPORT ORDER WAS ISSUED; REQUIRING THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT WITH THE CLERK OF THE DISTRICT COURT; REQUIRING THE COMMENCEMENT OF CONTEMPT OF COURT PROCEEDINGS UPON THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 40-5-222 AND 40-5-227, MCA . . . . .	922
203	<i>(House Bill No. 629; Hamilton)</i> PROVIDING FOR MEDIATION OF CRIMINAL PROCEEDINGS . . . . .	924
204	<i>(House Bill No. 657; Ebinger)</i> REVISING CONSTRUCTION LIEN LAW TO ALLOW THE CONTRACTING OWNER TO FILE A BOND WITHIN 30 DAYS OF AN ACTION BROUGHT TO FORECLOSE UPON A CONSTRUCTION LIEN; AND AMENDING SECTIONS 71-3-551 AND 71-3-553, MCA . . . . .	926
205	<i>(House Bill No. 782; Caferro)</i> PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM REQUIRING REPAYMENT FROM FOOD STAMP RECIPIENTS FOR DEPARTMENT ERRORS; ESTABLISHING THE DEPARTMENT'S RESPONSIBILITY FOR REPAYING A FEDERAL CLAIM FOR OVERPAYMENT OF FOOD STAMPS IN CERTAIN CASES; AMENDING SECTIONS 39-51-2208 AND 53-2-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .	927
206	<i>(Senate Bill No. 36; Cocchiarella)</i> REVISING AND CLARIFYING THE PAYMENT OF MOTOR VEHICLE REGISTRATION FEES; AMENDING SECTION 61-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	929
207	<i>(Senate Bill No. 47; Esp)</i> AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY THE EXISTING STATUTE REQUIRING AN AGENCY TO NOTIFY A BILL'S SPONSOR AT THE TIME THAT THE AGENCY BEGINS TO WRITE RULES IMPLEMENTING THE BILL AFTER IT IS ENACTED; AND AMENDING SECTION 2-4-302, MCA . . . . .	934
208	<i>(Senate Bill No. 150; Gillan)</i> CLARIFYING THAT A FUND OF A TAX-EXEMPT ORGANIZATION FROM WHICH CONTRIBUTIONS ARE EXPENDED DIRECTLY FOR CONSTRUCTING, RENOVATING, OR PURCHASING OPERATIONAL ASSETS IS NOT A PERMANENT, IRREVOCABLE FUND FOR THE PURPOSES OF DETERMINING THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX CREDIT;	

AMENDING SECTION 15-30-165, MCA, SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001, AND SECTION 7, CHAPTER 4, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 936

209 (*Senate Bill No. 160; Schmidt*) ALLOWING LOCAL GOVERNMENTS, TRANSPORTATION DISTRICTS, AND NONPROFIT ORGANIZATIONS TO USE MONEY FROM THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT AS MATCHING FUNDS FOR FEDERAL GRANTS; AND AMENDING SECTION 7-14-112, MCA . . . . . 938

210 (*Senate Bill No. 169; Laslovich*) ADJUSTING THE REDUCTION IN THE BASE ENTITLEMENT SHARE, FOR FUNDING RESPONSIBILITIES FOR PUBLIC DEFENDER SERVICES, FOR CASCADE COUNTY, FLATHEAD COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, AND YELLOWSTONE COUNTY; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 940

211 (*Senate Bill No. 177; Squires*) EXTENDING THE TIME IN WHICH A PETITION MAY BE FILED WITH A DISTRICT COURT TO SET ASIDE AN AGENCY DECISION MADE IN VIOLATION OF THE PUBLIC PARTICIPATION IN GOVERNMENT STATUTES IN TITLE 2, CHAPTER 3, PART 1 OR 2, MCA; AND AMENDING SECTIONS 2-3-114 AND 2-3-213, MCA. . . . . 950

212 (*Senate Bill No. 193; Laslovich*) REQUIRING A CHILD PROTECTIVE SOCIAL WORKER TO SUBMIT AN AFFIDAVIT TO THE COUNTY ATTORNEY WITHIN 2 WORKING DAYS OF A CHILD'S REMOVAL FROM A HOME; REQUIRING THE AFFIDAVIT TO BE PROVIDED TO THE PARENTS AT THE SAME TIME, IF POSSIBLE; INCREASING THE TIME TO FILE AN ABUSE AND NEGLECT PETITION FROM 2 DAYS TO 5 DAYS; AND AMENDING SECTION 41-3-301, MCA . . . . . 951

213 (*Senate Bill No. 248; Story*) RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, FOREST SERVICE-MONTANA COMPACT; PROVIDING FOR A CHANGE IN APPROPRIATION RIGHT TO INSTREAM FLOW IN CERTAIN INSTANCES; PROVIDING ADDITIONAL CRITERIA THAT MUST BE MET BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE TO BE ABLE TO CHANGE AN APPROPRIATION RIGHT TO INSTREAM FLOW; REQUIRING APPLICANTS TO SUBMIT PROOF OF ANY WRITTEN SPECIAL USE AUTHORIZATION REQUIRED BY FEDERAL LAW TO OCCUPY, USE, OR TRAVERSE NATIONAL FOREST SYSTEM LANDS FOR THE PURPOSE OF DIVERSION, IMPOUNDMENT, STORAGE, TRANSPORTATION, WITHDRAWAL, USE, OR DISTRIBUTION OF WATER IN CERTAIN INSTANCES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES NECESSARY FOR STATE WATER RESERVATIONS; PROVIDING FOR PROCESSING OF STATE WATER RESERVATIONS FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE IN ALL BASINS IN MONTANA; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, 85-2-308, 85-2-310, 85-2-311, 85-2-312, 85-2-316, 85-2-319, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-401, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 952

214 (*Senate Bill No. 282; Lind*) CLARIFYING THAT IF A PERSON GIVES WARNING OF RECORDING A CONVERSATION, EITHER PARTY MAY

	RECORD; AMENDING SECTION 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	1006
215	<i>(Senate Bill No. 285; Cooney)</i> REVISING THE CAPITOL COMPLEX MASTER PLAN BY EXCEPTING THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER FROM THE DEFINITION OF "CAPITOL COMPLEX" SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER MASTER PLAN REQUIREMENTS DO NOT APPLY TO THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER; AMENDING SECTION 2-17-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	1007
216	<i>(Senate Bill No. 286; Cooney)</i> REVISING THE RESTRICTIONS ON THE NAMING OF CERTAIN BUILDINGS, SPACES, AND ROOMS IN THE CAPITOL COMPLEX; PROVIDING THAT THE CAPITOL BUILDING MAY NOT BE NAMED AFTER ANY PERSON; AMENDING SECTION 2-17-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	1007
217	<i>(Senate Bill No. 299; Moss)</i> REVISING LAWS RELATING TO HERITAGE PRESERVATION AND CULTURAL TOURISM; PROVIDING FOR THE LEASE OR EXCHANGE OF HISTORIC PROPERTY; PROVIDING FOR HERITAGE PRESERVATION AND CULTURAL TOURISM COMMISSIONS; PROVIDING FOR THE DESIGNATION, ADMINISTRATION, AND PROMOTION OF HERITAGE AND CULTURAL TOURISM RESOURCES; PROVIDING FUNDING; AMENDING SECTIONS 7-16-2201, 7-16-2205, AND 18-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	1008
218	<i>(Senate Bill No. 305; Laslovich)</i> ALLOWING OFF-PREMISES DISPLAY AND SALE OF NEW MOTOR VEHICLES IN COUNTIES OTHER THAN THE COUNTY IN WHICH THE DEALER'S ESTABLISHED PLACE OF BUSINESS IS LOCATED UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 61-4-123, MCA. . . . .	1013
219	<i>(Senate Bill No. 364; Story)</i> REVISING PROVISIONS GOVERNING VACANCIES ON BOARDS OF COUNTY COMMISSIONERS; PROVIDING PROCEDURES WHEN MULTIPLE VACANCIES OCCUR THAT PREVENT ESTABLISHMENT OF A QUORUM; REQUIRING THAT APPOINTMENTS BE MADE BY THE COUNTY COMPENSATION BOARD OR BY THE DISTRICT JUDGE IF NO COMPENSATION BOARD EXISTS; REQUIRING APPOINTMENTS TO BE MADE FROM LISTS PROVIDED BY PARTISAN COUNTY CENTRAL COMMITTEES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 7-4-2106, MCA. . . . .	1015
220	<i>(Senate Bill No. 367; Lind)</i> INSTRUCTING THE CODE COMMISSIONER TO RENUMBER TITLE 69, CHAPTER 8, PART 10, MCA, AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, MCA . . . . .	1017
221	<i>(Senate Bill No. 374; Cooney)</i> AUTHORIZING A PERSON WHO HOLDS A POWER OF ATTORNEY FROM A MEMBER OF THE UNITED STATES ARMED FORCES TO APPLY FOR AN ABSENTEE BALLOT ON BEHALF OF THE MEMBER OF THE ARMED FORCES; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	1017
222	<i>(Senate Bill No. 378; Gillan)</i> PROVIDING THAT, FOR INDIVIDUAL INCOME TAXES AND CORPORATE LICENSE AND INCOME TAXES, IF A TERM IS NOT DEFINED, THEN THE DEFINITION IN THE INTERNAL REVENUE CODE APPLIES; AMENDING SECTIONS 15-30-305 AND 15-31-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .	1019



223 (*Senate Bill No. 414; Laslovich*) CLARIFYING THAT THE LAWS GOVERNING MOTOR CARRIERS DO NOT APPLY TO THE TRANSPORTATION OF HOUSEHOLD GOODS AND GARBAGE IN THE COMMERCIAL AREAS OF A CITY, TOWN, OR VILLAGE WITH A POPULATION OF LESS THAN 500 PERSONS; AND AMENDING SECTION 69-12-102, MCA . . . . . 1019

224 (*Senate Bill No. 440; J. Tropila*) REQUIRING A MILITARY VETERAN IN THE MEMBERSHIP OF THE STATE WORKFORCE INVESTMENT BOARD; AMENDING SECTION 53-2-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1021

225 (*Senate Bill No. 453; Essmann*) CREATING A UNIFORM FRAMEWORK TO INFORM THE PUBLIC OF MATTERS BEFORE THE BOARDS AND PROGRAMS OF THE DEPARTMENT OF LABOR AND INDUSTRY WITH RESPECT TO DISCIPLINARY PROCEEDINGS; AMENDING SECTIONS 37-1-101, 37-1-131, 37-1-136, 37-1-311, AND 37-1-405, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1022

226 (*Senate Bill No. 459; Elliott*) GIVING PREFERENCE TO PRODUCTS MADE IN THE UNITED STATES WHEN EQUAL CHOICES EXIST; AND AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA. . . . . 1026

227 (*Senate Bill No. 480; Lind*) REQUIRING DISCLOSURE OF THE COLLECTION AND USE OF CERTAIN DATA GATHERED BY RENTAL VEHICLE ENTITIES . . . . . 1028

228 (*Senate Bill No. 502; Cooney*) CLARIFYING CURRENT EXEMPTIONS TO THE ACCESSIBILITY STANDARDS FOR POLLING PLACES; AMENDING SECTIONS 13-3-202, 13-3-205, 13-3-206, 13-3-207, 13-3-212, AND 13-3-213, MCA; AND REPEALING SECTIONS 13-3-203 AND 13-3-204, MCA . . . . . 1028

229 (*Senate Bill No. 527; Gillan*) REVISING WHEN CONDOMINIUM CONSTRUCTION IS EXEMPT FROM REVIEW UNDER CERTAIN PROVISIONS OF THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1031

230 (*House Bill No. 12; Callahan*) GENERALLY REVISING LAWS RELATED TO PROSECUTION SERVICES; PROVIDING LEGISLATIVE FINDINGS; REVISING THE FUNDING OF AND BUDGETING FOR COUNTY ATTORNEY SALARIES; CLARIFYING CERTAIN PROVISIONS ON COUNTY POPULATION AND FULL-TIME OR PART-TIME COUNTY ATTORNEY POSITIONS; PROVIDING FOR THE STATUTORY APPROPRIATION OF STATE CONTRIBUTIONS FOR COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 7-4-2502, 7-4-2503, 7-4-2704, 7-4-2706, 17-7-112, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1032

231 (*House Bill No. 526; Groesbeck*) REVISING THE TERRITORIAL INTEGRITY ACT LAWS TO AVOID WASTEFUL DUPLICATION OF FACILITIES; CLARIFYING AND DEFINING CERTAIN TERMS; ELIMINATING THE REBUTTABLE PRESUMPTION THAT THE NEAREST LINE IS THE LEAST-COST ELECTRIC SERVICE FACILITY FOR A NEW CUSTOMER; CLARIFYING ELECTRIC SERVICE FACILITIES PROVIDED TO LARGE CUSTOMERS; PROVIDING A PROCESS FOR SERVICING NEW SUBDIVISIONS; PROVIDING A DISPUTE RESOLUTION PROCESS; AMENDING SECTIONS 69-5-102, 69-5-105, 69-5-106, AND 69-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1038

232 *(House Bill No. 540; Groesbeck)* REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY \$50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103, 39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1041

233 *(Senate Bill No. 185; Hawks)* PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES; DEFINING “MEDIUM-SPEED ELECTRIC VEHICLE”; PROHIBITING OPERATION OF A MEDIUM-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; REQUIRING CERTAIN EQUIPMENT ON A MEDIUM-SPEED ELECTRIC VEHICLE; ALLOWING FOR THE OPERATION OF A VEHICLE EQUIPPED A CERTAIN WAY WITHOUT A MOTORCYCLE ENDORSEMENT; AMENDING SECTIONS 61-1-101 AND 61-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1043

234 *(Senate Bill No. 369; Smith)* ELIMINATING THE REQUIREMENT THAT RURAL COOPERATIVES USE THE FORMULAS PROVIDED IN POLE ATTACHMENT RULES OF THE FEDERAL COMMUNICATIONS COMMISSION OR SUCCESSOR FORMULAS RELATED TO RATES, TERM, OR CONDITIONS OF POLE ATTACHMENT AGREEMENTS; AMENDING SECTION 35-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1054

235 *(House Bill No. 361; Kottel)* REVISING REQUIREMENTS FOR A PROXY MARRIAGE; REQUIRING ONE PARTY TO A PROXY MARRIAGE TO BE A MEMBER OF THE ARMED FORCES OF THE UNITED STATES ON FEDERAL ACTIVE DUTY OR A RESIDENT OF MONTANA; AMENDING SECTIONS 40-1-202 AND 40-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1055

236 *(House Bill No. 369; Pomnichowski)* INCREASING THE AMOUNTS THAT A COUNTY MAY BORROW WITHOUT A VOTE OF THE ELECTORATE; AMENDING SECTION 7-7-2402, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1056

237 *(House Bill No. 450; Pomnichowski)* ALLOWING THE USE OF A PARTIAL RATHER THAN A FULL SOCIAL SECURITY NUMBER ON AN APPLICATION FOR A RECREATIONAL LICENSE, CONTINGENT UPON THE GRANT OF AN EXEMPTION FROM THE FEDERAL GOVERNMENT ALLOWING THE USE OF THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER AND UPON WRITTEN CERTIFICATION THAT THE CONTINGENCY HAS OCCURRED; AMENDING SECTIONS 87-2-106 AND 87-2-202, MCA, AND SECTION 3, CHAPTER 321, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE . . . . . 1057

238 *(House Bill No. 452; Kottel)* PROVIDING FOR THE ACKNOWLEDGMENT OF EDUCATIONAL AND EMPLOYMENT ACHIEVEMENT CREDIT BY THE DEPARTMENT OF CORRECTIONS TO A PAROLEE THAT MAY REDUCE SUPERVISED TIME SPENT ON PAROLE; AND AMENDING SECTION 46-23-1021, MCA. . . . . 1061

239 *(House Bill No. 36; Musgrove)* REPEALING THE TERMINATION DATE FOR INCREASING THE LIMIT TO \$3 MILLION FOR A LOAN TO A WATER USERS’ ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; REPEALING SECTION 2, CHAPTER 418, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1062

240 (*House Bill No. 153; Jacobson*) ADOPTING THE MODEL REGISTERED AGENTS ACT; PROVIDING FOR FILING OF REGISTRATION FOR AGENTS FOR SERVICE OF PROCESS WITH THE SECRETARY OF STATE; PROVIDING THAT A REGISTERED AGENT'S ADDRESS IS NOT THE MEANS OF DETERMINING WHERE PUBLICATION IS APPROPRIATE; ELIMINATING THE REQUIREMENT FOR A REGISTERED OFFICE; PROVIDING FOR JURISDICTION IF A PRINCIPAL OFFICE IS NOT LOCATED IN MONTANA; AMENDING SECTIONS 15-31-103, 35-1-116, 35-1-216, 35-1-226, 35-1-425, 35-1-518, 35-1-523, 35-1-838, 35-1-940, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-1-1040, 35-1-1104, 35-1-1109, 35-1-1309, 35-2-115, 35-2-130, 35-2-213, 35-2-222, 35-2-423, 35-2-528, 35-2-535, 35-2-609, 35-2-613, 35-2-729, 35-2-822, 35-2-823, 35-2-832, 35-2-904, 35-2-909, 35-2-1109, 35-3-202, 35-3-209, 35-3-210, 35-4-311, 35-4-411, 35-6-102, 35-8-202, 35-8-208, 35-8-209, 35-8-1003, 35-8-1011, 35-8-1014, 35-8-1203, 35-9-207, 35-9-501, 35-12-508, AND 35-12-601, MCA; REPEALING SECTIONS 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317, 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827, 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, AND 35-12-507, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1062

241 (*House Bill No. 433; Wiseman*) REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO MAKE READILY AVAILABLE FOR PUBLIC INSPECTION A SUMMARY REPORT ITEMIZING EXPENDITURES FOR LOBBYING AN ELECTED OR APPOINTED FEDERAL OFFICIAL; REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO DESIGNATE AN OFFICE FROM WHICH THE SUMMARY REPORT MAY BE OBTAINED; AND REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO POST THE SUMMARY REPORT TO THE INTERNET . . . . . 1100

242 (*House Bill No. 496; French*) ALLOWING ADVANCED PRACTICE REGISTERED NURSES OR LICENSED PHYSICIAN ASSISTANTS TO COMPLETE MEDICAL EXAMS REQUIRED BY TRAFFIC LAWS; AND AMENDING SECTIONS 61-5-105, 61-5-111, 61-5-120, 61-5-207, 61-9-428, AND 61-13-103, MCA . . . . . 1100

243 (*House Bill No. 594; Stahl*) DESIGNATING AN OFFICIAL LULLABY FOR MONTANA . . . . . 1106

244 (*House Bill No. 636; Bixby*) PROHIBITING QUOTAS FOR STOPS, CITATIONS, AND ARRESTS BY LAW ENFORCEMENT OFFICERS; PROHIBITING THE USE OF QUOTAS IN EVALUATING LAW ENFORCEMENT OFFICERS; AMENDING SECTIONS 7-32-103, 7-32-2107, 7-32-4105, 44-1-302, AND 46-6-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1106

245 (*House Bill No. 641; Musgrove*) PROVIDING THAT A PERSON UNDER 21 YEARS OF AGE MAY NOT BE ARRESTED FOR OR CHARGED WITH THE OFFENSE OF POSSESSION OR CONSUMPTION OF AN ALCOHOLIC BEVERAGE SOLELY BECAUSE THE PERSON WAS AT A PLACE WHERE OTHER PERSONS WERE POSSESSING OR CONSUMING ALCOHOLIC BEVERAGES; AND AMENDING SECTION 45-5-624, MCA . . . . . 1108

246 (*House Bill No. 681; Driscoll*) REVISING PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; DEFINING TERMS; APPLYING CERTAIN PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT TO COMPETITIVE ELECTRICITY SUPPLIERS; AMENDING SECTIONS

	69-8-1003, 69-8-1004, 69-8-1005, AND 69-8-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	1111
247	<i>(House Bill No. 19; McNutt)</i> REVISING LAWS GOVERNING STATE LAND ADMINISTRATION TO CLARIFY THAT LAND GRANTED PURSUANT TO THE MORRILL ACT IS NOT SUBJECT TO DEDUCTIONS OF INTEREST OR INCOME FOR PURPOSES OF FUNDING THE ADMINISTRATION OF MORRILL ACT LAND OR FUNDS DERIVED FROM MORRILL ACT LAND; PROVIDING A STATUTORY APPROPRIATION FOR THE ADMINISTRATION OF MORRILL ACT LAND; PROVIDING FOR THE CARRYOVER OF THE UNEXPENDED PORTION OF THE STATUTORY APPROPRIATION; PROVIDING FOR REIMBURSEMENT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MORRILL ACT TRUST FOR THE ADMINISTRATIVE COSTS OF INVESTING THE MORRILL ACT FUNDS; AMENDING SECTIONS 17-1-508, 17-6-201, 17-7-502, 77-1-108, 77-1-109, 77-1-602, 77-1-606, 77-1-613, 77-1-905, 77-2-328, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	1117
248	<i>(House Bill No. 26; McGillvray)</i> TRANSFERRING THE RAIL SERVICE COMPETITION COUNCIL FROM THE OFFICE OF THE GOVERNOR TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; DECREASING, MODIFYING, AND STAGGERING THE MEMBERSHIP OF THE COUNCIL; EXPANDING THE DUTIES OF THE COUNCIL TO INCLUDE PROMOTING THE EXPANSION OF EXISTING RAIL LINES AND THE CONSTRUCTION OF NEW RAIL LINES IN MONTANA; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 2-15-246, MCA . . . .	1124
249	<i>(House Bill No. 77; Clark)</i> IMPLEMENTING MEDICAID PROVISIONS OF THE FEDERAL DEFICIT REDUCTION ACT OF 2005 BY ALLOWING RECOVERY OF PAYMENTS OWED TO MEDICAID RECIPIENTS AND REQUIRING COORDINATION OF ELIGIBILITY INFORMATION ABOUT MEDICAID RECIPIENTS; AMENDING SECTION 33-35-306, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	1126
250	<i>(House Bill No. 83; Hiner)</i> REVISING THE LAWS RELATING TO MEDICAL PAROLE OF PRISON INMATES; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE SHALL HOLD A HEARING ON APPLICATIONS FOR MEDICAL PAROLE; REVISING PROCEDURES AND STANDARDS FOR APPLICATION FOR AND ELIGIBILITY FOR MEDICAL PAROLE; AMENDING SECTION 46-23-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . .	1128
251	<i>(House Bill No. 117; Henry)</i> REQUIRING NEWBORN HEARING SCREENINGS AND EDUCATION; AMENDING SECTIONS 53-19-401, 53-19-402, AND 53-19-404, MCA; AND REPEALING SECTION 53-19-403, MCA. . . . .	1130
252	<i>(House Bill No. 154; Clark)</i> REVISING THE LAWS GOVERNING COMMITMENT PROCEEDINGS FOR THE DEVELOPMENTALLY DISABLED TO ALLOW A COURT TO ORDER COMMUNITY TREATMENT AS AN OPTION; DEFINING THE ELEMENTS OF A COMMUNITY TREATMENT PLAN; AND AMENDING SECTIONS 53-20-102, 53-20-112, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-128, 53-20-129, 53-20-132, 53-20-133, AND 53-20-141, MCA . . . .	1132
253	<i>(House Bill No. 235; Dutton)</i> EXPANDING BUSINESS IMPROVEMENT DISTRICT PURPOSES TO INCLUDE TOURISM, PROMOTION, AND MARKETING; REVISING OPTIONS FOR ASSESSMENT OF COSTS TO INCLUDE FLAT-FEE OPTIONS; PROVIDING FOR DISTRICTS	

COMPOSED OF NONCONTIGUOUS AREAS IF PROPERTY IS RELATED BY PURPOSE; ALLOWING CLASSIFICATION CRITERIA TO BE USED IN ASSESSING COSTS; AND AMENDING SECTIONS 7-12-1102, 7-12-1111, 7-12-1121, 7-12-1132, AND 7-12-1133, MCA . . . . 1143

254 *(House Bill No. 272; L. Jones)* ALLOWING DISSEMINATION OF THE PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER; REQUIRING A NEW PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER EVERY YEAR DURING THE REGISTRATION PERIOD; AND AMENDING SECTIONS 46-23-504, 46-23-505, AND 46-23-508, MCA . . 1145

255 *(House Bill No. 283; Campbell)* ESTABLISHING THE FINANCIAL ASSISTANCE AMOUNT FOR RESIDENT NONBENEFICIARY STUDENTS; REVISING ELIGIBILITY CRITERIA; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1149

256 *(House Bill No. 291; Ross)* CLARIFYING THE POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW RELATED TO AIR QUALITY PERMITTING AND RULEMAKING FOR AGRICULTURAL OPERATIONS; AMENDING SECTION 75-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1151

257 *(House Bill No. 300; Milburn)* CLARIFYING THE FALSE STATEMENT PROVISIONS BASED ON STATEMENTS MADE BY GOVERNMENTAL SOURCES RELATING TO AN APPLICATION FOR AN ALCOHOLIC BEVERAGE LICENSE; AMENDING SECTION 16-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1151

258 *(House Bill No. 310; Dutton)* PROVIDING FOR THE TRANSFER OF REAL PROPERTY BY A BENEFICIARY DEED; PROVIDING A FORM FOR A BENEFICIARY DEED; PROVIDING FOR THE REVOCATION OF A BENEFICIARY DEED; PROVIDING FOR THE RIGHTS OF CREDITORS AND OTHERS; AMENDING SECTION 72-6-111, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 1153

259 *(House Bill No. 319; Glaser)* PROVIDING CONTRACT INDEMNIFICATION PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS AND HIGHWAY CONSTRUCTION CONTRACTS; AND PROVIDING FOR THE PAYMENT OF CONTRACTORS AND SUBCONTRACTORS ON HIGHWAY CONSTRUCTION CONTRACTS . 1156

260 *(House Bill No. 328; Stahl)* CLARIFYING THE DEFINITION OF THE TERM "FACILITY" IN THE MONTANA MAJOR FACILITY SITING ACT; AND AMENDING SECTION 75-20-104, MCA . . . . . 1158

261 *(House Bill No. 364; Malcolm)* CREATING THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD TO ADMINISTER PROGRAMS FOR THE MITIGATION AND REIMBURSEMENT OF LIVESTOCK LOSSES BY WOLVES; ESTABLISHING BOARD MEMBERSHIP, POWERS, DUTIES, AND REPORTING REQUIREMENTS; ESTABLISHING ACCOUNTS AND A TRUST FUND TO FUND THE MITIGATION OF LIVESTOCK LOSSES BECAUSE OF WOLF PREDATION AND TO REIMBURSE LIVESTOCK OWNERS FOR LOSSES RELATED TO PREDATION BY WOLVES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES. . . . . 1160

262 *(House Bill No. 389; Barrett)* REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING DEVELOPMENT OR IMPLEMENTATION OF THE STATE ELK MANAGEMENT PLAN; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

TO REQUEST, AS PART OF AN ELK MANAGEMENT PLAN, THAT PUBLIC LANDS AND PUBLIC ROADS REMAIN OPEN TO PUBLIC ACCESS DURING THE BIG GAME HUNTING SEASON; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO CONSIDER LANDOWNER TOLERANCE WHEN DECIDING WHETHER TO RESTRICT ELK HUNTING IN A HUNTING DISTRICT; AMENDING SECTIONS 87-1-201 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1166

263 (House Bill No. 414; Reinhart) PROVIDING THAT RECORDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES WHO ARE COMMITTED TO A RESIDENTIAL FACILITY BE MAINTAINED SEPARATELY . . . . . 1169

264 (House Bill No. 415; Reinhart) REMOVING THE PROVISION THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR A MINOR SUBDIVISION; MAKING PARK DEDICATION FOR A MINOR SUBDIVISION DISCRETIONARY; AND AMENDING SECTION 76-3-621, MCA . . . . . 1170

265 (House Bill No. 428; Gallik) ALLOWING A VEHICLE THAT IS PERMANENTLY REGISTERED TO BE DETERMINED TO BE A JUNK VEHICLE IF IT MEETS ALL OTHER CRITERIA FOR DETERMINING JUNK VEHICLE STATUS; AND AMENDING SECTION 75-10-501, MCA . . . . . 1172

266 (House Bill No. 435; Parker) AMENDING STATUTES REGARDING THE ABILITY OF A VICTIM OR DEPENDENT OF A DECEASED VICTIM TO RECOVER MONEY GAINED AS A DIRECT RESULT OF A HOMICIDE OR CERTAIN OTHER CRIMINAL OFFENSES; PROHIBITING CERTAIN PERSONS FROM SELLING CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AND PROVIDING A PENALTY; REVISING THE STATUTE OF LIMITATIONS FOR CERTAIN WRONGFUL DEATH ACTIONS; AMENDING SECTIONS 27-2-204 AND 53-9-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1173

267 (House Bill No. 456; McNutt) REMOVING REFERENCES TO MOBILE HOMES, MOBILE HOME OWNERS, AND MOBILE HOME PARKS FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; CREATING THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING REQUIREMENTS FOR MOBILE HOME LOT RENTAL AGREEMENTS; ESTABLISHING RIGHTS, OBLIGATIONS, AND REMEDIES FOR MOBILE HOME LOT TENANTS AND LANDLORDS; AMENDING SECTIONS 70-24-103, 70-24-305, 70-24-314, 70-24-422, 70-24-431, AND 70-24-441, MCA; AND REPEALING SECTIONS 70-24-313, 70-24-315, 70-24-432, AND 70-24-436, MCA . . . . . 1175

268 (House Bill No. 459; Heinert) REQUIRING THE RESPECTFUL TRANSPORTATION AND DELIVERY OF A FETUS WHEN AN AUTOPSY IS REQUIRED; AND AMENDING SECTION 46-4-123, MCA . . . . . 1196

269 (House Bill No. 460; Keane) REVISING THE METAL MINE RECLAMATION LAWS; CLARIFYING RECLAMATION PLAN REQUIREMENTS; REQUIRING A TEMPORARY RECLAMATION BOND FOR CERTAIN UNANTICIPATED CIRCUMSTANCES; PROVIDING A PROCESS FOR DETERMINING THE TEMPORARY BOND AMOUNT; AMENDING SECTION 82-4-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1197

270 (House Bill No. 467; K. Peterson) REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; CLARIFYING THAT CLAIMS AGAINST HEALTH CARE PROVIDERS IN CERTAIN GOVERNMENTAL INFIRMARIES

ARE NOT SUBJECT TO THE PROVISIONS OF THE ACT; INCLUDING  
TELEMEDICINE PHYSICIANS UNDER THE PROVISIONS OF THE  
ACT; AMENDING SECTION 27-6-103, MCA; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE. . . . . 1201

271 (*House Bill No. 468; McGillvray*) PROVIDING THAT THE PROCEEDINGS  
AND RECORDS OF THE MONTANA STATE BOARD OF MEDICAL  
EXAMINERS’ PROGRAM TO ASSIST PHYSICIANS ARE  
CONFIDENTIAL. . . . . 1203

272 (*House Bill No. 487; Hiner*) INCREASING THE AMOUNT OF REVENUE  
OR FINANCIAL ASSISTANCE RECEIVED BY A LOCAL GOVERNING  
ENTITY THAT IS NECESSARY TO REQUIRE THAT AN AUDIT BE  
CONDUCTED; AND AMENDING SECTION 2-7-503, MCA . . . . . 1204

273 (*House Bill No. 520; Arntzen*) GENERALLY REVISING ELECTION  
LAWS; REVISING TERMINOLOGY; AMENDING PROVISIONS  
RELATED TO PUBLIC NOTICE, OFFICE HOURS, WRITE-IN  
CANDIDATES, CANDIDATE VACANCIES, FILING PROCEDURES,  
BALLOTS, PRECINCT REGISTERS, THE ELIGIBILITY OF POLITICAL  
PARTIES TO HOLD PRIMARY ELECTIONS, AND VOTE-COUNTING  
SYSTEMS; AMENDING TIMELINES FOR NOMINATION OF  
PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS; REVISING  
WHEN BALLOTS ARE AVAILABLE FOR ABSENTEE VOTING;  
REVISING THE INFORMATION INCLUDED IN THE VOTER  
INFORMATION PAMPHLET; AMENDING SECTIONS 13-1-101,  
13-1-108, 13-1-111, 13-1-202, 13-2-304, 13-10-204, 13-10-209, 13-10-211,  
13-10-301, 13-10-311, 13-10-326, 13-10-503, 13-10-601, 13-12-205,  
13-12-207, 13-13-117, 13-13-201, 13-13-205, 13-13-213, 13-13-214,  
13-13-241, 13-15-107, 13-15-201, 13-15-206, 13-15-209, 13-15-301,  
13-17-103, 13-17-211, 13-17-212, 13-25-101, AND 13-27-401, MCA; AND  
REPEALING SECTIONS 13-13-203, 13-16-414, 13-17-206, AND  
13-17-305, MCA . . . . . 1205

274 (*House Bill No. 524; Hamilton*) REVISING THE REQUIREMENTS FOR  
INCORPORATING A CITY OR TOWN; PROVIDING THAT ANY WARD  
OF A PROPOSED CITY OR TOWN MUST HAVE AT LEAST 200  
INHABITANTS PER SQUARE MILE OF LAND AREA; REQUIRING THE  
PROPOSED AREA TO HAVE A POST OFFICE; AND AMENDING  
SECTION 7-2-4101, MCA . . . . . 1227

275 (*House Bill No. 537; Ripley*) REVISING STATE HAIL INSURANCE LAWS;  
CLARIFYING THAT HAIL INSURANCE MAY BE ISSUED FOR ANY  
CROP OR OTHER AGRICULTURAL OR HORTICULTURAL PRODUCT  
SUBJECT TO INJURY OR DESTRUCTION BY HAIL; CLARIFYING  
REFERENCES TO CROPS; INCREASING THE AMOUNT OF ACTUAL  
INSURANCE THAT MAY BE WRITTEN FOR CROPS ON IRRIGATED  
AND NONIRRIGATED LANDS; AMENDING SECTIONS 80-2-203,  
80-2-207, 80-2-208, 80-2-209, 80-2-227, 80-2-231, AND 80-2-244, MCA;  
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1227

276 (*House Bill No. 630; Gallik*) PROVIDING THAT FRAUDULENT  
ELECTRONIC MISREPRESENTATION, “PHISHING”, IS THE CRIME  
OF A THEFT OF IDENTITY; AND AMENDING SECTIONS 30-14-1701  
AND 30-14-1702, MCA. . . . . 1230

277 (*House Bill No. 633; Dutton*) REVISING THE LAWS RELATING TO THE  
TRANSFER OF ALL-BEVERAGES LIQUOR LICENSES TO A QUOTA  
AREA PURSUANT TO A DEPARTMENT-CONDUCTED LOTTERY;  
PROVIDING THAT THE OWNER OF A LOTTERY-TRANSFERRED  
ALL-BEVERAGES LIQUOR LICENSE IS NOT ELIGIBLE TO OFFER  
GAMBLING; ALLOWING A PERSON TO APPLY FOR A LOTTERY

ALL-BEVERAGES LIQUOR LICENSE TRANSFER ONLY ONCE IN EVERY 12-MONTH PERIOD; REQUIRING A LETTER OF CREDIT TO ACCOMPANY AN ALL-BEVERAGE LIQUOR LICENSE LOTTERY TRANSFER APPLICATION; PROVIDING THAT AN APPLICANT OR A PERSON WITH AN OWNERSHIP INTEREST IN AN APPLICANT MAY NOT HAVE AN OWNERSHIP INTEREST IN AN ALL-BEVERAGES LIQUOR LICENSE; REQUIRING THAT A SUCCESSFUL APPLICANT FOR A LOTTERY-AWARDED ALL-BEVERAGES LIQUOR LICENSE COMMENCE BUSINESS WITHIN 1 YEAR; AMENDING SECTIONS 16-4-204 AND 23-5-119, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1232

278 (House Bill No. 634; Van Dyk) INCREASING THE AMOUNT OF BONDS AND NOTES THAT THE FACILITY FINANCE AUTHORITY MAY ISSUE; AMENDING SECTION 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1235

279 (House Bill No. 672; Glaser) REVISING SCHOOL DISTRICT DEBT LIMITATIONS; CLARIFYING ANB CALCULATIONS FOR FACILITY-GUARANTEED MILL VALUE PURPOSES; AMENDING SECTIONS 20-9-406 AND 20-9-407, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1236

280 (House Bill No. 688; Olson) CREATING A COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; ALLOCATING COAL SEVERANCE TAXES TO THE COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; PROVIDING THAT THE MONEY IN THE ACCOUNT BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ADMINISTRATION AND ENFORCEMENT OF COAL AND URANIUM MINE PERMITTING AND RECLAMATION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1239

281 (House Bill No. 690; Bergren) REVISING THE SUSPENSION PROCEDURE FOR MUNICIPAL FIREFIGHTERS TO PROVIDE FOR AN OPTIONAL HEARING BEFORE A CITY COUNCIL OR CITY COMMISSION; AND AMENDING SECTION 7-33-4124, MCA. . . . . 1241

282 (House Bill No. 742; Raser) PROVIDING FOR THE ADMISSIBILITY OF HEARSAY STATEMENTS TO PROVE THE OCCURRENCE OF, OR THE IDENTITY OF THE ABUSER, IN CASES OF PHYSICAL OR SEXUAL ABUSE OF AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY; AND PROVIDING AN APPLICABILITY DATE . . . . . 1242

283 (House Bill No. 743; Clark) ADDING CHRONIC DISEASE PROGRAMS TO THE DEFINITION OF "PROGRAMS FOR TOBACCO DISEASE PREVENTION"; AMENDING SECTIONS 17-6-602 AND 17-6-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1245

284 (House Bill No. 744; Rice) REVISING CERTAIN SCHOOL LAWS; REVISING TERRITORY TRANSFER LAWS RELATED TO K-12 DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1246

285 (House Bill No. 771; W. Jones) GENERALLY REVISING ACTUARIAL VALUATION AND REPORTING REQUIREMENTS RELATED TO THE INVESTMENTS AND BENEFITS OF THE STATEWIDE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS; AMENDING SECTIONS 5-11-210, 19-2-405, 19-2-407, 19-2-408, 19-20-201, AND 19-20-719, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1249

286 (House Bill No. 778; Stahl) PROVIDING AN EXEMPTION FROM TAXATION FOR OIL AND GAS WELLS, WORKING INTERESTS, AND



NONWORKING INTERESTS OWNED BY THE STATE OR A LOCAL GOVERNMENT; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1255

287 (*House Bill No. 781; Windy Boy*) REQUIRING EACH LAW ENFORCEMENT AGENCY TO ADOPT A POLICY ON RACE-BASED TRAFFIC STOPS, INCLUDING THE COLLECTION OF DATA ON RACIAL PROFILING IN TRAFFIC STOPS; AMENDING SECTION 44-2-117, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1257

288 (*House Bill No. 785; Lange*) EXEMPTING FROM THE WORKERS' COMPENSATION ACT AN ATHLETE EMPLOYED BY OR ON A TEAM OR A SPORTS CLUB ENGAGED IN CONTACT SPORTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1259

289 (*House Bill No. 811; Wells*) ESTABLISHING A TRADITIONAL ARTS AND CRAFTS ACCOUNT IN THE STATE SPECIAL REVENUE FUND; ALLOWING THE MONTANA ARTS COUNCIL TO PURCHASE AND SELL TRADITIONAL AMERICAN INDIAN ARTS AND CRAFTS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER REVENUE GENERATED BY PAST SALES AND TO TRANSFER ACQUISITIONS TO THE MONTANA ARTS COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1263

290 (*Senate Bill No. 89; Williams*) REQUIRING BREAK TIME AND PRIVACY FOR NEEDS OF BREASTFEEDING MOTHERS IN STATE AND COUNTY GOVERNMENTS, MUNICIPALITIES, SCHOOL DISTRICTS, AND THE UNIVERSITY SYSTEM; AND PROVIDING THAT IT IS DISCRIMINATION TO REFUSE TO HIRE OR EMPLOY, BAR, OR DISCHARGE FROM EMPLOYMENT AN EMPLOYEE WHO EXPRESSES BREAST MILK OR TO DISCRIMINATE IN TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT . . . . . 1264

291 (*Senate Bill No. 95; Smith*) REMOVING THE REQUIREMENT FOR A PHYSICIAN DIRECTOR OF AN AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM; AMENDING SECTIONS 50-6-502, 50-6-503, AND 50-6-505, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1265

292 (*Senate Bill No. 102; Lind*) REVISING LAWS GOVERNING MUTUAL AID AGREEMENTS FOR PROTECTION AGAINST DISASTERS, INCIDENTS, AND EMERGENCIES; INCLUDING GOVERNING BODIES OF FIRE PROTECTION SERVICES, EMERGENCY MEDICAL CARE PROVIDERS, AND LOCAL GOVERNMENT SUBDIVISIONS AS ENTITIES THAT MAY PARTICIPATE IN CERTAIN MUTUAL AID AGREEMENTS AND FROM WHICH ASSISTANCE MAY BE REQUESTED; AMENDING SECTIONS 7-33-2108, 7-33-2202, 7-33-2405, 7-33-4112, 10-3-202, 10-3-209, 10-3-1102, AND 10-3-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1267

293 (*Senate Bill No. 114; Larson*) REVISING CONSTRUCTION LIEN LAWS; DEFINING "ORIGINAL CONTRACTOR"; REVISING CONSTRUCTION LIEN NOTICE REQUIREMENTS; AND AMENDING SECTIONS 71-3-522 AND 71-3-531, MCA . . . . . 1272

294 (*Senate Bill No. 132; Gallus*) PROVIDING FOR INFORMED CONSENT AND A WAIVER OF THE REQUIREMENT FOR A RUBELLA BLOOD TEST AS A CONDITION OF OBTAINING A MARRIAGE LICENSE; AND AMENDING SECTIONS 40-1-202, 40-1-203, 40-1-205, 40-1-206, AND 40-1-208, MCA . . . . . 1275

295	<i>(Senate Bill No. 246; Gallus)</i> ADDING AMBULANCE SERVICES TO THOSE HEALTH CARE PROVIDERS ABLE TO ESTABLISH A LIEN FOR SERVICES RENDERED IN THE DIAGNOSIS OR TREATMENT OF A MEDICAL CONDITION; AND AMENDING SECTION 71-3-1114, MCA	1277
296	<i>(Senate Bill No. 339; Murphy)</i> REVISING ANNEXATION AND ZONING LAWS; PROHIBITING A MUNICIPALITY FROM ANNEXING TERRITORY LOCATED IN A COUNTY DIFFERENT FROM THE COUNTY IN WHICH THE MUNICIPALITY IS LOCATED UNLESS CERTAIN CONDITIONS ARE MET; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1278
297	<i>(Senate Bill No. 406; Bales)</i> CLARIFYING THE PROCESS OF PETITIONING FOR ESTABLISHMENT OF A COUNTY BOUNTY PROGRAM AND COUNTY PREDATORY ANIMAL CONTROL PROGRAMS BY PROVIDING THAT A SIGNATURE ON A PETITION MAY NOT BE WITHDRAWN BY THE SIGNER AFTER THE HOUR SET FOR HEARING THE PETITION; AMENDING SECTIONS 81-7-202, 81-7-305, AND 81-7-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1279
298	<i>(Senate Bill No. 422; Gebhardt)</i> ELIMINATING THE REQUIREMENT THAT POLE TRAILERS ENGAGED IN TRANSPORTING LOGS BE EQUIPPED WITH WRAPPERS MADE OF STEEL CHAIN, STEEL CABLE, OR A COMBINATION OF STEEL CHAIN AND STEEL CABLE; AMENDING SECTION 61-9-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1281
299	<i>(Senate Bill No. 532; Gallus)</i> AUTHORIZING PARTICIPATION IN THE FIREFIGHTERS' UNITED RETIREMENT SYSTEM BY CERTAIN FIRE DEPARTMENTS; AUTHORIZING A RETURN TO SERVICE FOR A LIMITED NUMBER OF HOURS WITHOUT LOSS OF BENEFITS; AMENDING SECTIONS 19-13-210 AND 19-13-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1282
300	<i>(Senate Bill No. 544; Hansen)</i> CREATING A MONTANA-CERTIFIED NATURAL BEEF CATTLE MARKETING PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF LIVESTOCK; PROVIDING QUALIFICATIONS FOR THE CERTIFICATION OF MONTANA NATURAL BEEF CATTLE AND MONTANA-CERTIFIED NATURAL GRASS-FED BEEF CATTLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1284
301	<i>(House Bill No. 3; Franklin)</i> APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1285
302	<i>(House Bill No. 4; Musgrove)</i> APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2008 AND 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1286
303	<i>(House Bill No. 9; Kasten)</i> ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE CULTURAL AND AESTHETIC PROJECTS TRUST FUND ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1295

304 (*House Bill No. 27; Driscoll*) AUTHORIZING A WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM AND PROVIDING FOR ITS ADMINISTRATION; PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A WIRELESS ENHANCED 9-1-1 FEE; ESTABLISHING ACCOUNTS FOR THE DEPOSIT OF FEES COLLECTED; PROVIDING FOR DISTRIBUTION OF THE FEES COLLECTED; DEFINING ELIGIBILITY CRITERIA FOR WIRELESS COST RECOVERY; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-114, 10-4-201, AND 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1298

305 (*House Bill No. 63; Musgrove*) PROVIDING FOR THE ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; PROVIDING A SUPPLEMENTAL CONTRIBUTION, PAYABLE BY THE STATE, TO THE TEACHERS' RETIREMENT SYSTEM FOR EMPLOYEES OF SCHOOL DISTRICTS AND COMMUNITY COLLEGES; PROVIDING FOR A STATUTORY APPROPRIATION; REVISING DEFINITIONS; ESTABLISHING STATE POLICY REGARDING TEACHERS' RETIREMENT; REVISING THE REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD TO SET THE TEACHERS' RETIREMENT SYSTEM'S REGULAR INTEREST RATE; INCREASING THE EMPLOYER CONTRIBUTION RATE FOR TEACHERS' RETIREMENT; INCREASING THE SUPPLEMENTAL CONTRIBUTION TO THE OPTIONAL RETIREMENT PROGRAM; ELIMINATING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO INCREASE THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING AND CLARIFYING THE MAXIMUM AMOUNT OF COMPENSATION A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MAY EARN UNDER CERTAIN CIRCUMSTANCES; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 19-20-101, 19-20-102, 19-20-501, 19-20-605, 19-20-621, 19-20-716, 19-20-719, AND 19-20-731, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 1305

306 (*House Bill No. 95; Olson*) PROVIDING A STATUTORY APPROPRIATION TO FUND A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; REQUIRING A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 17-7-502 AND 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1315

307 (*House Bill No. 125; Kasten*) APPROPRIATING FUNDS TO REPAY IN FULL THE LOAN FOR THE STARTUP COSTS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1317

308 (*House Bill No. 136; Milburn*) PROVIDING FOR PAYMENT OF A STATE DEATH BENEFIT TO BENEFICIARIES OF MEMBERS OF THE MONTANA NATIONAL GUARD WHO DIE IN THE LINE OF DUTY WHILE ON STATE ACTIVE DUTY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-116 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1317

309 (*House Bill No. 139; Branae*) CREATING A LEGISLATIVE BRANCH RETIREMENT TERMINATION RESERVE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION AND A FUND TRANSFER; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1320

310 (*House Bill No. 148; Grinde*) EXPANDING THE DEFINITION OF "PUBLIC SWIMMING POOL"; DEFINING TERMS; IMPOSING FEES FOR THE REVIEW OF PLANS RELATING TO THE CONSTRUCTION

OR ALTERATION OF PUBLIC SWIMMING POOLS OR PUBLIC BATHING PLACES; CLARIFYING THE TERM "SEPARATE" WITH REGARD TO PUBLIC SWIMMING POOLS; INCREASING FEES FOR LICENSURE OF PUBLIC SWIMMING POOLS, PUBLIC BATHING PLACES, AND SPAS OR WADING POOLS; AUTHORIZING LOCAL BOARDS OF HEALTH TO ESTABLISH INSPECTION AND ENFORCEMENT ACTIVITIES OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEPOSIT ALL FEES COLLECTED BY LOCAL BOARDS OF HEALTH IN A STATE SPECIAL REVENUE FUND; CLARIFYING LICENSE VALIDATION REQUIREMENTS; AND AMENDING SECTIONS 50-53-102, 50-53-103, 50-53-201, 50-53-202, 50-53-203, AND 50-53-206, MCA . . . . .

1321

311 (House Bill No. 179; French) ESTABLISHING THE MONTANA MILITARY FAMILY RELIEF FUND; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR USE BY THE FUND; AUTHORIZING THE AWARD OF STATUS-BASED, NEEDS-BASED, AND CASUALTY-BASED GRANTS; ESTABLISHING INELIGIBILITY CRITERIA FOR GRANTS; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO IMPLEMENT AND ADMINISTER THE FUND; PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF FOR THE FUND; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A TRANSFER OF FUNDS TO THE FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . .

1325

312 (House Bill No. 259; Reinhart) DEFINING TERMS; RESTRICTING THE USE AND LOCATION OF GRAY WATER REUSE SYSTEMS; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO CREATE RULES REGULATING RESIDENTIAL GRAY WATER REUSE SYSTEMS; AMENDING SECTION 75-5-305, MCA; AND PROVIDING AN APPLICABILITY CLAUSE . . . . .

1329

313 (House Bill No. 269; Rice) REVISING LAWS RELATING TO WEEDS; REMOVING THE REQUIREMENT THAT AN OWNER SELLING PROPERTY PROVIDE NOTICE THAT THERE IS THE POTENTIAL EXISTENCE OF NOXIOUS WEEDS; PROVIDING THAT A COUNTY WEED BOARD MAY ESTABLISH EMBARGOES; CLARIFYING STATUTES REGARDING THE CREATION OF A NOXIOUS WEED FUND IN EACH COUNTY; REMOVING THE REQUIREMENT THAT AN INTEGRATED NOXIOUS WEED MANAGEMENT PLAN WITH STATE AGENCIES BE FOR 6 YEARS; REMOVING THE REDUNDANT STATUTE REGARDING RESPONSIBILITY FOR ASSESSMENTS AND TAXES FOR THE WEED DISTRICT; PROVIDING A TRANSFER OF FUNDS; AMENDING SECTIONS 7-22-2116, 7-22-2126, 7-22-2142, AND 7-22-2151, MCA; REPEALING SECTIONS 7-22-2149 AND 77-6-114, MCA; AND PROVIDING EFFECTIVE DATES . . . . .

1330

314 (House Bill No. 298; Hiner) EXTENDING THE 2003 APPROPRIATION OF MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES . . . . .

1333

315 (House Bill No. 299; Milburn) REVISING PROVISIONS RELATED TO SKI AREAS AND PASSENGER ROPEWAYS; PROVIDING DEFINITIONS; REVISING THE DEFINITIONS OF "PASSENGER ROPEWAY" AND

“SKIER”; REQUIRING THE MARKING OF DESIGNATED FREESTYLE TERRAIN; AND AMENDING SECTIONS 23-2-702, 23-2-703, 23-2-704, 23-2-731, 23-2-733, 23-2-734, 23-2-735, AND 23-2-736, MCA . . . . . 1334

316 *(House Bill No. 362; Olson)* ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CANCEL CERTAIN DELINQUENT REAL PROPERTY TAXES; AMENDING SECTIONS 15-16-701 AND 15-16-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1338

317 *(House Bill No. 425; Sesso)* REVISING REQUIRED CONTENTS OF SUBDIVISION REGULATIONS; REQUIRING SUBDIVISION REGULATIONS TO REQUIRE A SUBDIVIDER TO MEET WITH AN AGENT OF THE GOVERNING BODY PRIOR TO SUBMITTAL OF A SUBDIVISION APPLICATION; AMENDING SECTION 76-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1340

318 *(House Bill No. 461; Ebinger)* ESTABLISHING REQUIREMENTS FOR CIGARETTES SOLD IN THE STATE; ESTABLISHING REDUCED IGNITION PROPENSITY STANDARDS AND TESTING AND CERTIFICATION REQUIREMENTS; PROVIDING DEFINITIONS; REQUIRING THAT RECORDS OF TESTING BE MAINTAINED AND MADE AVAILABLE UPON REQUEST; REQUIRING THE DEPARTMENT OF JUSTICE TO REPORT TO THE LEGISLATURE EVERY 4 YEARS; REQUIRING CERTAIN INFORMATION FOR CERTIFICATION OF CIGARETTES; REQUIRING A CIGARETTE MANUFACTURER TO PAY A FEE FOR CERTIFICATION AND REQUIRING REVENUE FROM THE FEE TO BE USED FOR CERTAIN PURPOSES; REQUIRING SPECIFIC MARKING ON CIGARETTE PACKAGING; PROVIDING PENALTIES FOR NONCOMPLIANCE; ALLOWING RULEMAKING BY THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF REVENUE; ALLOWING INSPECTION OF CIGARETTES AND OF RECORDS KEPT BY SELLERS OF CIGARETTES; CREATING A FIRE PREVENTION AND PUBLIC SAFETY FUND; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 1343

319 *(House Bill No. 473; Ross)* REPEALING THE WATER ADJUDICATION FEE; CLARIFYING CLAIMS EXAMINATION PRIORITIES; PROVIDING FOR COMPLETION OF EXAMINATION ON A BASIN-BY-BASIN BASIS; TRANSFERRING MONEY FROM THE GENERAL FUND TO THE WATER ADJUDICATION ACCOUNT; PROVIDING THAT AN APPROPRIATION FOR WATER ADJUDICATION MAY NOT BE PART OF THE BASE BUDGET IF THE CLAIMS EXAMINATION BENCHMARKS ARE NOT MET; PROVIDING FOR THE COLLECTION OF OUTSTANDING WATER ADJUDICATION FEES; AMENDING SECTIONS 15-1-216, 17-7-102, 85-2-270, 85-2-271, 85-2-280, AND 85-2-281, MCA; REPEALING SECTIONS 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-283, MCA, AND SECTION 15, CHAPTER 288, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 1350

320 *(House Bill No. 490; French)* ALLOWING AN INDIVIDUAL INCOME TAX CREDIT FOR THE ADOPTION OF AN ELIGIBLE CHILD; ESTABLISHING CERTAIN INFORMATION REQUIREMENTS TO CLAIM THE CREDIT; PROVIDING THAT THE CREDIT MAY BE CARRIED FORWARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 1356

321 *(House Bill No. 514; Caferro)* REVISING THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS RECEIVING SERVICES FROM A YOUTH CARE FACILITY OR IS A PATIENT IN OR A RESIDENT OF A MENTAL HEALTH FACILITY, A RESIDENTIAL

FACILITY, OR A COMMUNITY-BASED FACILITY OR IS A RECIPIENT OF COMMUNITY-BASED SERVICES AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY OR COMMUNITY-BASED SERVICE; PROVIDING A LIMITED MARRIAGE EXCEPTION; AND AMENDING SECTIONS 45-5-501 AND 45-5-502, MCA. . . . . 1356

322 (House Bill No. 556; McChesney) ALLOWING A SPECIAL FUEL USER TO USE DYED SPECIAL FUEL FOR CERTAIN CONSTRUCTION PROJECTS; PROVIDING FOR THE ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR THE SUSPENSION OR REVOCATION OF A TEMPORARY PERMIT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REFUSE, UNDER CERTAIN CONDITIONS, TO ISSUE A TEMPORARY PERMIT OR A SPECIAL FUEL USER PERMIT TO A SPECIAL FUEL USER; IMPOSING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 15-70-302 AND 15-70-372, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1358

323 (House Bill No. 574; Hiner) APPROPRIATING \$50,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF COMMERCE TO BE USED FOR GRANTS TO ASSIST IN THE RESTORATION AND RENOVATION OF CULTURAL AND HISTORICAL ARTS CENTERS; AND PROVIDING AN EFFECTIVE DATE. . . . . 1361

324 (House Bill No. 609; Hamilton) REQUIRING A SCHOOL DISTRICT TO USE SELF-INSURED HEALTH BENEFIT PLAN RESERVE FUNDS TO PAY EMPLOYEE CLAIMS AND LIABILITIES OR TO PAY EMPLOYEE BENEFIT COSTS IF A DISTRICT'S SELF-INSURED HEALTH BENEFIT PLAN IS DISSOLVED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1362

325 (House Bill No. 611; Jacobson) GENERALLY REVISING THE LAWS RELATING TO TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE, CONDUCT AUDITS, AND ENGAGE IN OTHER ENFORCEMENT ACTIVITIES; CLARIFYING THAT PROVIDERS OF PREPAID WIRELESS SERVICES ARE REQUIRED TO ASSESS AND COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE; AMENDING SECTIONS 2-15-2212, 53-19-302, 53-19-306, 53-19-307, 53-19-308, 53-19-310, 53-19-311, AND 69-3-1302, MCA; REPEALING SECTION 53-19-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1362

326 (House Bill No. 677; Arntzen) PROVIDING AN APPROPRIATION TO THE BOARD OF CRIME CONTROL TO SUSTAIN FUNDING FOR EXISTING PREVENTION AND AFTER-SCHOOL PROGRAMS FOR AT-RISK YOUTH; AUTHORIZING GRANT FUNDS TO BE USED TO LEVERAGE MATCHING FUNDS; AUTHORIZING THE BOARD OF CRIME CONTROL TO USE UP TO 3 PERCENT OF THE FUNDING FOR ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE. . . . . 1370

327 (House Bill No. 680; Cohenour) AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO CONTRACTS FOR OUT-OF-STATE COLLECTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1370

328 *(House Bill No. 706; Caferro)* PROVIDING FOR THE PERIODIC INFLATION ADJUSTMENT OF CAMPAIGN CONTRIBUTION LIMITS; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO CALCULATE THE ADJUSTED LIMITS AND TO PUBLISH THE ADJUSTED LIMITS AS A RULE; AND AMENDING SECTION 13-37-216, MCA. . . . . 1372

329 *(House Bill No. 737; Hilbert)* GENERALLY REVISING MOTOR VEHICLE LAWS; GENERALLY REVISING LICENSING REQUIREMENTS FOR THE SALE OF MOTOR VEHICLES, TRAILERS, CAMPERS, MOTORBOATS, PERSONAL WATERCRAFT, SAILBOATS, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; CONSOLIDATING MOTORBOAT, PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY DEALER LICENSING UNDER TITLE 61, MCA; AUTHORIZING A SEPARATE BROKER'S LICENSE FOR CERTAIN VEHICLE TRANSACTIONS; ESTABLISHING REQUIREMENTS FOR A BROKER'S LICENSE; REVISING REQUIREMENTS FOR LICENSING CERTAIN VEHICLE MANUFACTURERS; DEFINING CERTAIN TERMS AND REVISING OTHER DEFINITIONS; REVISING AND CLARIFYING THE TITLING AND REGISTRATION PROCESS FOR CERTAIN VEHICLES; CLARIFYING RESIDENCY REQUIREMENTS FOR VEHICLE REGISTRATION; REVISING THE LIMITATION FOR VEHICLE TRANSFERS FROM A SMALL ESTATE; CLARIFYING THE AUTHORITY TO ISSUE TEMPORARY REGISTRATION PERMITS; REVISING AND CLARIFYING CERTAIN PROVISIONS FOR THE ISSUANCE OF LICENSE PLATES; ELIMINATING LIENS FOR MOTOR VEHICLE REGISTRATION FEES; CLARIFYING FEES FOR PERMANENT REGISTRATION OF LIGHT VEHICLES; REVISING AND CLARIFYING PROCEDURES FOR SUSPENDING LICENSE PLATES AND REGISTRATION FOLLOWING CERTAIN CONVICTIONS; REVISING THE FEE FOR CERTAIN RECORD SEARCHES; PROHIBITING EXHAUST NOISE IN EXCESS OF A CERTAIN LEVEL; AMENDING SECTIONS 15-1-122, 23-2-502, 23-2-515, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 61-1-101, 61-3-101, 61-3-115, 61-3-116, 61-3-206, 61-3-216, 61-3-222, 61-3-224, 61-3-301, 61-3-303, 61-3-320, 61-3-321, 61-3-332, 61-3-448, 61-3-463, 61-3-468, 61-3-503, 61-3-562, 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-109, 61-4-111, 61-4-112, 61-4-120, 61-4-122, 61-4-123, 61-4-124, 61-4-125, 61-4-126, 61-4-129, 61-4-130, 61-4-131, 61-4-135, 61-4-136, 61-4-137, 61-4-202, 61-4-204, 61-5-112, 61-6-304, 61-8-102, AND 61-11-105, MCA; REPEALING SECTIONS 23-2-513, 23-2-540, 23-2-619, AND 23-2-818, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 1373

330 *(House Bill No. 738; Mendenhall)* REVISING WORKERS' COMPENSATION LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY NOT SET THE RATE FOR MEDICAL SERVICES AT A RATE GREATER THAN 10 PERCENT ABOVE THE AVERAGE OF THE CONVERSION FACTORS USED BY THE TOP FIVE INSURERS OR THIRD-PARTY ADMINISTRATORS PROVIDING DISABILITY INSURANCE WITHIN THIS STATE WHO USE THE RESOURCE-BASED RELATIVE VALUE SCALE TO DETERMINE FEES FOR COVERED SERVICES; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED BY RULE; AMENDING SECTIONS 39-71-704 AND 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES . . . . . 1446

331 *(House Bill No. 755; Keane)* PROVIDING THAT THE UNIFORM UNCLAIMED PROPERTY ACT DOES NOT APPLY TO CERTAIN GIFT

- CERTIFICATES; AMENDING SECTIONS 30-14-102, 70-9-802, AND 70-9-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1453
- 332 (*House Bill No. 759; Hendrick*) REVISING SEARCH AND RESCUE LAWS; PROVIDING THAT MONEY IN THE SPECIAL REVENUE ACCOUNT ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION FOR SEARCH AND RESCUE OPERATIONS BE REIMBURSED TO LOCAL SEARCH AND RESCUE UNITS TO DEFRAY COSTS OF SEARCH AND RESCUE MISSIONS; PROVIDING THAT MONEY IN THE FISH, WILDLIFE, AND PARKS SPECIAL REVENUE ACCOUNT FOR SEARCH AND RESCUE REMAIN AVAILABLE FOR REIMBURSEMENT OF SEARCH AND RESCUE MISSIONS AND TO PROVIDE MATCHING FUNDS TO REIMBURSE COUNTIES FOR SEARCH AND RESCUE TRAINING AND EQUIPMENT COSTS ON AN ONGOING BASIS; AMENDING SECTIONS 10-3-801 AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1459
- 333 (*House Bill No. 764; Milburn*) REQUIRING THE INSURANCE COMMISSIONER PURSUANT TO A DIRECTIVE FROM THE UNITED STATES CONGRESS TO WORK COLLECTIVELY WITH OTHER STATES TO DEVELOP AND IMPLEMENT APPROPRIATE STANDARDS TO PROTECT ACTIVE DUTY MEMBERS OF THE ARMED FORCES FROM DISHONEST AND PREDATORY INSURANCE SALES PRACTICES WHILE LOCATED IN THIS STATE; AUTHORIZING THE INSURANCE COMMISSIONER TO IMPLEMENT A SYSTEM FOR THE RECEIPT AND DISSEMINATION OF REPORTS FROM GOVERNMENTAL AGENCIES AND INSURERS OF DISCIPLINARY ACTIONS TAKEN BY FEDERAL OR STATE GOVERNMENT ENTITIES OR INSURERS AGAINST PERSONS THAT SELL OR SOLICIT THE SALE OF ANY LIFE INSURANCE PRODUCT TO ACTIVE DUTY MEMBERS OF THE ARMED FORCES; AUTHORIZING THE INSURANCE COMMISSIONER TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1463
- 334 (*House Bill No. 765; Olson*) ALLOWING A LEGISLATOR TO CONTINUE ACTIVE MEMBERSHIP IN THE PUBLIC RETIREMENT SYSTEM OF WHICH THE LEGISLATOR IS A MEMBER; AMENDING SECTIONS 5-2-304 AND 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 1464
- 335 (*Senate Bill No. 50; Gallus*) REVISING THE PROVISION IN THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS ON PROBATION OR PAROLE AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE SUPERVISING AUTHORITY WITH AUTHORITY OVER THE VICTIM; PROVIDING A LIMITED MARRIAGE EXCEPTION; REMOVING THE SPECIFIC SENTENCE FOR SEXUAL INTERCOURSE WITHOUT CONSENT BY CORRECTIONAL FACILITY EMPLOYEES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA . . . . . 1468
- 336 (*Senate Bill No. 145; Shockley*) GENERALLY REVISING WILDFIRE PROTECTION LAWS; ESTABLISHING A STATE FIRE POLICY; PROVIDING DEFINITIONS; CONSOLIDATING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; STANDARDIZING TERMINOLOGY; REQUIRING THE DEPARTMENT TO APPOINT FIREWARDENS AND TO PRESCRIBE DUTIES FOR FIREWARDENS; REMOVING PROVISIONS REQUIRING THE COUNTY TO LIST FOREST LANDS WITH THE DEPARTMENT; CLARIFYING THAT A PERMIT IS NOT



NEEDED TO IGNITE CERTAIN RECREATIONAL FIRES DURING WILDFIRE SEASON; REVISING PENALTIES FOR FAILURE TO COMPLY WITH BURNING PERMITS, FAILURE TO EXTINGUISH RECREATIONAL FIRES, AND THROWING LIGHTED MATERIAL; EXTENDING TO ALL WILDLANDS CERTAIN PROVISIONS THAT PREVIOUSLY APPLIED ONLY TO FOREST LANDS; IMPOSING UPON OWNERS OF ALL LANDS THE DUTY TO PROTECT THE LANDS FROM WILDFIRE; ESTABLISHING A FORMULA FOR DETERMINING ASSESSMENTS FOR FIRE PROTECTION; REVISING THE DATE BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL CERTIFY TO THE DEPARTMENT OF REVENUE THE NAMES OF CERTAIN LANDOWNERS; AMENDING SECTIONS 45-6-203, 76-13-101, 76-13-102, 76-13-103, 76-13-104, 76-13-105, 76-13-110, 76-13-121, 76-13-122, 76-13-123, 76-13-124, 76-13-125, 76-13-126, 76-13-201, 76-13-202, 76-13-203, 76-13-204, 76-13-205, 76-13-206, 76-13-207, 76-13-208, 76-13-209, 76-13-210, 76-13-211, AND 77-5-103, MCA; REPEALING SECTIONS 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, AND 77-5-106, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1470

337 (*Senate Bill No. 175; Squires*) EXPRESSLY PROVIDING THAT AN AGENCY MAY NOT ENFORCE, IMPLEMENT, OR OTHERWISE TREAT AN ADMINISTRATIVE RULE AS EFFECTIVE UNTIL THE EFFECTIVE DATE OF THE RULE; AMENDING SECTION 2-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1482

338 (*Senate Bill No. 181; Cobb*) CHANGING THE DEADLINE BY WHICH A WRITE-IN CANDIDATE IN A MAIL BALLOT ELECTION MUST FILE A DECLARATION OF INTENT; AND AMENDING SECTION 13-10-211, MCA. . . . . 1484

339 (*Senate Bill No. 204; Ryan*) PREVENTING AN INSURER FROM REQUIRING MOTOR VEHICLE REPAIR ESTIMATES OR REPAIRS FROM CERTAIN BUSINESSES BY CLAIMANTS; ALLOWING ACCESS FOR COMPETITIVE ESTIMATES; AND AMENDING SECTION 33-18-224, MCA . . . . . 1485

340 (*Senate Bill No. 214; Lewis*) REVISING LAWS RELATING TO INDEPENDENT CONTRACTORS; CLARIFYING THAT CERTAIN INDEPENDENT CONTRACTORS ARE NOT EXEMPT FOR UNEMPLOYMENT INSURANCE PURPOSES; EXPANDING ELIGIBILITY FOR WORKERS' COMPENSATION PURPOSES; AMENDING SECTIONS 39-51-204 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1488

341 (*Senate Bill No. 219; Balyeat*) CLARIFYING THAT A STATE EMPLOYEE WHO TERMINATES EMPLOYMENT MAY NOT RECEIVE SEVERANCE PAY, A BONUS, OR ANY OTHER TYPE OF MONETARY PAYMENT EXCEPT AS AUTHORIZED BY LAW; AMENDING SECTION 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1493

342 (*Senate Bill No. 251; Larson*) ALLOWING THE STATE TO TRANSFER PUBLIC ROADWAYS TO LOCAL GOVERNMENTS IN EXCHANGE FOR THE LOCAL GOVERNMENT TAKING OVER FULL MAINTENANCE AUTHORITY; PROVIDING FOR THE PUBLIC ROADWAY TO BE KEPT IN OPERATION FOR PUBLIC PURPOSES; AND AMENDING SECTIONS 7-14-2101 AND 60-4-201, MCA . . . . . 1494

343 (*Senate Bill No. 266; Shockley*) CLARIFYING THAT INDIVIDUAL SCHOOL DISTRICT TRUSTEE MEMBERS ACTING IN THEIR OFFICIAL CAPACITY ARE IMMUNE FROM SUIT FOR DAMAGES;

	AMENDING SECTION 20-3-332, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	1496
344	( <i>Senate Bill No. 269; Larson</i> ) REVISING STANDARDS FOR RECORDED DOCUMENTS; AMENDING SECTION 7-4-2636, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	1496
345	( <i>Senate Bill No. 287; Weinberg</i> ) ADOPTING THE PROVISIONS OF THE REVISED UNIFORM ANATOMICAL GIFT ACT TO CLARIFY THE PROCEDURES FOR MAKING AN ANATOMICAL GIFT AND AMENDING OR REVOKING A DOCUMENT OF GIFT; ALLOWING CERTAIN MINORS TO MAKE ANATOMICAL GIFTS; CLARIFYING THE PURPOSE OF CERTAIN ANATOMICAL GIFTS; ESTABLISHING PROCEDURES FOR ANATOMICAL GIFTS WHEN A DEATH IS UNDER INVESTIGATION; AMENDING SECTIONS 46-4-103, 50-9-105, 50-10-103, 72-17-101, 72-17-102, 72-17-108, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-213, 72-17-214, AND 72-17-301, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. . . . .	1497
346	( <i>Senate Bill No. 289; Gallus</i> ) ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED MEDICATION FOR ASTHMA, SEVERE ALLERGIES, OR ANAPHYLAXIS; AMENDING SECTION 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . .	1512
347	( <i>Senate Bill No. 295; Tash</i> ) STATUTORILY PROVIDING FOR THE MONTANA NATIONAL GUARD YOUTH CHALLENGE PROGRAM; SPECIFYING A DEFINITION, LEGISLATIVE INTENT, AND STAFFING; AMENDING SECTION 10-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	1514
348	( <i>Senate Bill No. 296; Weinberg</i> ) REVISING THE QUOTA SYSTEM FOR ISSUING RESTAURANT BEER AND WINE LICENSES; REVISING THE NUMBER OF QUOTA AREAS; INCREASING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE ISSUED IN A QUOTA AREA; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . .	1515
349	( <i>Senate Bill No. 302; Barkus</i> ) REMOVING SPECIAL SPEED RESTRICTIONS FOR CERTAIN PORTIONS OF U.S. HIGHWAY 93; AND AMENDING SECTION 61-8-303, MCA. . . . .	1520
350	( <i>Senate Bill No. 308; J. Peterson</i> ) ALLOWING CERTAIN PROPERTY OWNERS TO VOTE IN A ROAD LEVY ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	1521
351	( <i>Senate Bill No. 312; Lind</i> ) PROHIBITING ECONOMIC CREDENTIALING IN EXCHANGE FOR HOSPITAL OR MEDICAL STAFF PRIVILEGES; PROVIDING DEFINITIONS; AMENDING SECTIONS 50-5-105 AND 50-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . .	1521
352	( <i>Senate Bill No. 317; Lewis</i> ) REVISING LAWS RELATED TO CONSERVATION EASEMENTS; REQUIRING THAT A CONSERVATION EASEMENT MAY NOT BE EXTINGUISHED BY TAKING FEE TITLE TO THE LAND TO WHICH THE CONSERVATION EASEMENT IS ATTACHED; CLARIFYING THAT A CONSERVATION EASEMENT RUNS WITH THE LAND; CLARIFYING THE REPORTING PROCESS OF CONSERVATION EASEMENT INFORMATION TO THE DEPARTMENT OF REVENUE; REQUIRING COORDINATION BETWEEN THE DEPARTMENT OF REVENUE AND DEPARTMENT OF ADMINISTRATION ON THE COLLECTION AND TRANSFER OF CONSERVATION EASEMENT INFORMATION; REQUIRING THE	

DEPARTMENT OF ADMINISTRATION TO MAKE CONSERVATION EASEMENT INFORMATION ACCESSIBLE ON THE DEPARTMENT'S WEBSITE AND AVAILABLE TO THE NATURAL HERITAGE PROGRAM; AMENDING SECTIONS 70-17-111, 70-17-203, 76-6-207, AND 90-1-404, MCA; AND PROVIDING EFFECTIVE DATES . . . . . 1524

353 (*Senate Bill No. 318; J. Peterson*) AMENDING MONTANA'S RECREATIONAL USE STATUTE TO PROVIDE LIMITED LIABILITY TO PRIVATE LANDOWNERS WHO PROVIDE AIRSTRIPS FOR THE PUBLIC WITHOUT VALUABLE CONSIDERATION; AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1527

354 (*Senate Bill No. 335; Tash*) PROVIDING A QUALITY EDUCATOR PAYMENT TO CERTIFIED TEACHERS EMPLOYED BY THE MONTANA YOUTH CHALLENGE PROGRAM; AMENDING SECTION 20-9-327, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1529

355 (*Senate Bill No. 370; Tash*) PROVIDING THAT AN APPROPRIATION RIGHT IS NOT ABANDONED IF AN APPROPRIATOR CEASES TO USE ALL OR PART OF AN APPROPRIATION RIGHT TO COMPLY WITH A CANDIDATE CONSERVATION AGREEMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1530

356 (*Senate Bill No. 419; Lind*) PROVIDING FOR INSURANCE COVERAGE UNDER A PARENT'S POLICY FOR UNMARRIED CHILDREN UNDER 25 YEARS OF AGE; DEFINING "DEPENDENT"; AMENDING SECTIONS 2-18-701, 2-18-704, 33-22-101, 33-22-140, 33-22-1803, 33-31-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1532

357 (*Senate Bill No. 442; Kaufmann*) CREATING AN ABANDONED MINE RECLAMATION ACCOUNT; REQUIRING USE OF THE ACCOUNT FOR RECLAMATION OF ABANDONED MINE LANDS; AND PROVIDING AN EFFECTIVE DATE . . . . . 1546

358 (*Senate Bill No. 443; Squires*) REVISING THE TIMES AT WHICH THE ELECTION ADMINISTRATOR MUST MAIL ADDRESS CONFIRMATION FORMS TO ELECTORS WHO HAVE REQUESTED ABSENTEE BALLOTS FOR FUTURE ELECTIONS; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 1548

359 (*Senate Bill No. 444; Wanzenried*) REVISING ADVANCED PRACTICE REGISTERED NURSE TREATMENT OF INJURED WORKERS; AND AMENDING SECTION 39-71-116, MCA . . . . . 1549

360 (*Senate Bill No. 517; Black*) REVISING THE TIME THAT CERTAIN POLLING PLACES MUST BE OPEN; AND AMENDING SECTION 13-1-106, MCA . . . . . 1553

361 (*Senate Bill No. 553; Black*) REVISING INCENTIVES FOR RECRUITING PHYSICIANS TO PRACTICE IN CERTAIN AREAS; EXPANDING THE REPAYMENT OF EDUCATIONAL DEBT TO INCLUDE PHYSICIANS PRACTICING IN MEDICALLY UNDERSERVED AREAS OR FOR UNDERSERVED POPULATIONS; INCREASING THE AMOUNT OF EDUCATIONAL DEBT THAT MAY BE PAID BY THE BOARD OF REGENTS; INCREASING THE FEE THAT MAY BE ASSESSED TO CERTAIN STUDENTS PREPARING TO BE PHYSICIANS; PHASING OUT THE TAX CREDIT FOR A PHYSICIAN PRACTICING IN RURAL AREAS; PROVIDING FOR TRANSFERS FROM THE STATE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNT FOR PAYING EDUCATIONAL DEBT BASED ON THE PHASEOUT OF THE

PHYSICIAN TAX CREDIT; AMENDING SECTIONS 15-30-189, 20-26-1501, 20-26-1502, AND 20-26-1503, MCA; REPEALING SECTIONS 15-30-188, 15-30-189, 15-30-190, AND 15-30-191, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES . . . . . 1553

362 (House Bill No. 790; L. Jones) REVISING ASSESSMENTS USED FOR PAYMENT OF EXPENSES INCURRED FOR ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; PROVIDING THAT FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT MAY BE USED FOR EXPENSES INCURRED IN ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; CHANGING CONTRIBUTION RATES TO THE UNEMPLOYMENT INSURANCE PROGRAM FOR GOVERNMENTAL ENTITIES AND ADJUSTING RATE SCHEDULES FOR EMPLOYERS UNDER THE UNEMPLOYMENT INSURANCE PROGRAM; AMENDING SECTIONS 39-51-404, 39-51-409, 39-51-1121, 39-51-1212, 39-51-1218, AND 39-51-3207, MCA; AND PROVIDING EFFECTIVE DATES . . . . . 1556

363 (House Bill No. 7; Kasten) PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; 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; TRANSFERRING FUNDS; REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA, AND SECTION 2, CHAPTER 473, LAWS OF 2003; REPEALING SECTION 10, CHAPTER 308, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES . . . . . 1562

364 (House Bill No. 8; Kasten) APPROVING RENEWABLE RESOURCE PROJECTS AND REGIONAL WATER PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 59TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING REGIONAL WATER PROJECTS AND PROVIDING AN APPROPRIATION FOR THE PROJECTS; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE . . . . . 1566

365 (House Bill No. 24; Klock) PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE; AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE . . . . . 1570

366 (House Bill No. 39; McNutt) REVISING THE WATER RIGHT OWNERSHIP UPDATE PROCESS; PROVIDING THAT THE DIVISION, SEVERANCE, OR EXEMPTING OF A WATER RIGHT REQUIRES THE FILING OF A FORM; PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF REVENUE WILL COORDINATE TO UPDATE OTHER WATER RIGHT OWNERSHIP RECORDS BASED ON PROPERTY TRANSFERS; PROVIDING THAT A TRANSFEREE OF A WATER RIGHT IS LIABLE FOR PAYMENT OF THE FEE AFTER RECEIVING NOTICE; PROVIDING THAT THE RECORDING OF A DEED OR OTHER INSTRUMENT MUST BE DELAYED IN CERTAIN INSTANCES; INCREASING THE PENALTY FOR NOT UPDATING

WATER RIGHT OWNERSHIP RECORDS WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 15-7-308, 85-2-421, 85-2-422, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . 1573

367 *(House Bill No. 40; Gallik)* AMENDING THE BIG SKY ON THE BIG SCREEN ACT; REMOVING THE \$1 MILLION LIMITATION ON THE AMOUNT OF CREDITS ALLOWED; STANDARDIZING THE APPLICATION FEE FOR TAX CREDITS; INCREASING PERCENTAGES FOR MONTANA LABOR AND FOR QUALIFIED MONTANA EXPENDITURES TO DETERMINE THE AMOUNT OF ALLOWABLE CREDITS; REQUIRING THAT ALL PURCHASES MADE BY A TAXPAYER IN CONNECTION WITH A STATE-CERTIFIED PRODUCTION MUST BE PAID IN FULL BEFORE THE CREDIT FOR QUALIFYING EXPENDITURES MAY BE CLAIMED; AMENDING SECTIONS 15-31-906, 15-31-907, 15-31-908, AND 15-31-911, MCA; REPEALING SECTION 15-31-909, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE . . . . . 1576

368 *(House Bill No. 49; Hamilton)* REQUIRING THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE TO APPOINT A SUBCOMMITTEE TO CONDUCT A STUDY OF LOCAL GOVERNMENT SPECIAL PURPOSE DISTRICTS; SPECIFYING THE MEMBERSHIP OF THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1579

369 *(House Bill No. 69; McNutt)* CREATING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; PROVIDING FOR LICENSE SUSPENSION, REVOCATION, AND REINSTATEMENT; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF ADMINISTRATION; AUTHORIZING EXAMINATIONS AND INVESTIGATIONS BY THE DEPARTMENT; REGULATING ACTIVITIES OF MORTGAGE LENDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR CRIMINAL PROCEEDINGS; AND AMENDING SECTION 31-1-111, MCA. . . . . 1581

370 *(House Bill No. 96; Kerns)* GENERALLY REVISING THE ESTABLISHMENT OF STATE VETERANS' CEMETERIES; AUTHORIZING THE BOARD OF VETERANS' AFFAIRS TO DESIGNATE A COUNTY VETERANS' CEMETERY AS A STATE VETERANS' CEMETERY SUBJECT TO BOARD CERTIFICATION; PROVIDING AN APPROPRIATION; AMENDING SECTION 10-2-601, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1599

371 *(House Bill No. 131; Sesso)* REVISING PUBLIC RETIREMENT LAWS; PROVIDING FOR THE ACTUARIAL FUNDING OF THE PUBLIC EMPLOYEES' AND SHERIFFS' RETIREMENT SYSTEMS BY INCREASING EMPLOYER CONTRIBUTION RATES; PROVIDING THAT THE INCREASE WILL NOT BE IMPOSED IF CERTAIN ACTUARIAL CONDITIONS ARE MET; ALLOCATING A PORTION OF THE EMPLOYER CONTRIBUTION IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED CONTRIBUTION PLAN TO PAY FOR THE PLAN'S STARTUP LOAN; REDUCING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', AND GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEMS HIRED OR ASSUMING OFFICE ON OR AFTER JULY 1, 2007; INCREASING THE STATUTORY APPROPRIATION FOR STATE RETIREMENT CONTRIBUTIONS FOR EMPLOYEES OF SCHOOL DISTRICTS; PROVIDING

APPROPRIATIONS; AMENDING SECTIONS 19-3-316, 19-3-319, 19-3-1605, 19-3-2117, 19-7-404, 19-7-711, 19-8-1105, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . .

1600

372 (House Bill No. 141; Jacobson) GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; INCREASING LICENSING FEES; REVISING LICENSE ISSUANCE, DENIAL, SUSPENSION, REVOCATION, AND REINSTATEMENT PROVISIONS; REVISING PROVISIONS RELATING TO FEES CHARGED CONSUMERS; REVISING PROVISIONS RELATING TO INSTALLMENT AND BALLOON PAYMENTS; MODIFYING PROVISIONS RELATING TO WAGE ASSIGNMENTS; REVISING THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS, TAKE OATHS, AND EXAMINE WITNESSES; PROVIDING FOR THE ISSUANCE OF CEASE AND DESIST ORDERS BY THE DEPARTMENT; MODIFYING INJUNCTION REQUIREMENTS; PROVIDING A COMPLAINT PROCEDURE; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-204, 32-5-207, 32-5-208, 32-5-301, 32-5-302, 32-5-303, 32-5-305, 32-5-306, 32-5-308, 32-5-310, 32-5-401, 32-5-402, 32-5-403, 32-5-405, AND 32-5-407, MCA; REPEALING SECTIONS 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, AND 32-5-506, MCA; AND PROVIDING EFFECTIVE DATES . . . . .

1607

373 (House Bill No. 155; Noonan) CREATING AN ACCOUNT IN THE STATE TREASURY FROM WHICH PREMIUMS PAID FOR GROUP LIFE INSURANCE BY MONTANA RESIDENTS WHO ARE MEMBERS OF THE MONTANA NATIONAL GUARD, RESERVE, OR ARMED FORCES WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION MAY BE REIMBURSED; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO DETERMINE SERVICE MEMBERS' ELIGIBILITY FOR REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID AND IMPLEMENT THE REIMBURSEMENT PROGRAM; EXEMPTING FROM STATE INCOME TAXATION THE AMOUNT RECEIVED BY A SERVICE MEMBER AS REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID; APPROPRIATING FUNDS TO REIMBURSE SERVICE MEMBERS WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION FOR THE PREMIUMS PAID BY MEMBERS FOR GROUP LIFE INSURANCE; AMENDING SECTION 15-30-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .

1619

374 (House Bill No. 195; Lange) RELATING TO SERVICES FOR INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; CLARIFYING THAT AN INDIVIDUAL MAY RETURN TO HIGH SCHOOL AFTER GRADUATION IF THE INDIVIDUAL IS NOT 19 YEARS OF AGE; PROVIDING THAT INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES FOR THE DEVELOPMENTALLY DISABLED ARE NOT DISQUALIFIED FROM ALSO RECEIVING MEDICAID IF QUALIFIED FOR MEDICAID; REQUIRING THAT ASSISTANCE FOR SERVICES BE MADE AVAILABLE TO INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .

1622

375 (House Bill No. 240; Nooney) ESTABLISHING A TEMPORARY EMERGENCY LODGING PROGRAM FOR INDIVIDUALS AND FAMILIES DISPLACED FROM THEIR RESIDENCES; PROVIDING A TAX CREDIT FOR PARTICIPATING ESTABLISHMENTS;

ESTABLISHING LIABILITY FOR DAMAGES; AND PROVIDING AN APPLICABILITY DATE . . . . . 1624

376 *(House Bill No. 257; Lake)* REVISING THE TAXPAYER BILL OF RIGHTS; REQUIRING THE DEPARTMENT OF REVENUE TO TREAT SIMILARLY SITUATED TAXPAYERS IN A SIMILAR MANNER REGARDING THE ADMINISTRATION AND COLLECTION OF TAXES AND AVAILABLE TAXPAYER REMEDIES; REQUIRING THE DEPARTMENT OF REVENUE TO ADHERE TO THE SAME TAX APPEAL DEADLINES AS THE TAXPAYER; PROVIDING FOR A FEE FOR MONITORING COMPLIANCE WITH THE MONTANA TAXPAYER BILL OF RIGHTS; AMENDING SECTIONS 15-1-222 AND 15-1-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1625

377 *(House Bill No. 278; Stoker)* SETTING THE GENETICS PROGRAM FEE; AMENDING SECTION 33-2-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1628

378 *(House Bill No. 330; Bergren)* CREATING THE MONTANA CLEAN RENEWABLE ENERGY BOND ACT; AUTHORIZING GOVERNMENTAL BODIES TO OWN AND OPERATE QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ISSUE CLEAN RENEWABLE ENERGY BONDS TO FINANCE THE ACQUISITION OR CONSTRUCTION OF QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ENTER INTO CONTRACTS NECESSARY TO ACQUIRE AND CONSTRUCT QUALIFIED ENERGY PROJECTS; PROVIDING TERMS AND CONDITIONS FOR THE ISSUANCE OF THE BONDS; PROVIDING THAT CERTAIN REQUIREMENTS BE MET PRIOR TO PROJECT FINANCING; CLARIFYING THAT THE PROVISIONS OF THIS ACT DO NOT AUTHORIZE A LOCAL GOVERNING BODY TO CONSTRUCT, OWN, OR OPERATE SOME POWERLINES; INCREASING THE AMOUNT OF BONDS ALLOWED UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-1604 AND 17-5-1608, MCA; AND PROVIDING EFFECTIVE DATES . . . . . 1628

379 *(House Bill No. 390; Nooney)* PROVIDING FOR AND REGULATING 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 OF HORSERACING TO CONDUCT ADVANCE DEPOSIT WAGERING; AMENDING SECTIONS 23-4-101, 23-4-202, 23-4-301, 23-4-302, AND 23-5-112, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1635

380 *(House Bill No. 426; Ross)* REMOVING THE \$500,000 LIMIT ON A COUNTY'S ROAD AND BRIDGE CAPITAL IMPROVEMENT FUND; AMENDING SECTION 7-14-2506, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1645

381 *(House Bill No. 480; Lake)* APPROPRIATING MONEY FOR THE MAINTENANCE AND RESTORATION OF THE DALY MANSION; AND PROVIDING AN EFFECTIVE DATE . . . . . 1645

382 *(House Bill No. 488; Jopek)* REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO CONDUCT A STUDY ON THE REVALUATION OF CLASS THREE AGRICULTURAL LAND, CLASS FOUR RESIDENTIAL AND COMMERCIAL PROPERTY, AND CLASS TEN FOREST LANDS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 1646

383 *(House Bill No. 512; Jones)* 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 ENGINEERING 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; TERMINATING A PRIOR TREASURE STATE ENDOWMENT GRANT; AMENDING SECTION 1, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES 1647

384 (House Bill No. 569; Rice) GENERALLY REVISING LAWS RELATED TO THE CONTROL OF DISEASES AND INSECTS IN NURSERIES; REVISING DEFINITIONS; DEFINING "PLANT DEALER" AND "LANDSCAPE SERVICE"; REVISING NURSERY LICENSE FEES; CLARIFYING THAT DEPARTMENT ACTIONS REQUIRED TO DEAL WITH INFECTED OR INFESTED NURSERY STOCK MUST BE CONDUCTED AT THE OWNER'S EXPENSE; REVISING THE DEPOSIT AND USE OF NURSERY OR PLANT DEALER FEES AND CIVIL PENALTIES; AND AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122, 80-7-123, 80-7-133, AND 80-7-135, MCA. . . 1654

385 (House Bill No. 583; Jopek) GENERALLY REVISING THE OPENCUT MINING ACT; AMENDING DEFINITIONS AND TERMINOLOGY; EXPANDING EXEMPTIONS; PROVIDING FOR SUSPENSION AND REVOCATION ORDERS; ELIMINATING APPLICATION FEES; REVISING APPEAL PROVISIONS; AMENDING SECTIONS 82-4-402, 82-4-403, 82-4-406, 82-4-422, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-436, AND 82-4-441, MCA; AND REPEALING SECTIONS 82-4-421 AND 82-4-423, MCA . . . . . 1659

386 (House Bill No. 608; Olson) TRANSFERRING MONEY FROM THE STATE GENERAL FUND TO THE ENDOWMENT FOR CHILDREN FUND; AND PROVIDING AN EFFECTIVE DATE. . . . . 1673

387 (House Bill No. 616; McChesney) PROVIDING THAT IT IS LAWFUL TO WAGER ON A FANTASY SPORTS LEAGUE CONDUCTED BY A PARIMUTUEL FACILITY THAT HAS BEEN LICENSED BY THE BOARD OF HORSERACING; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, AND 23-5-806, MCA. . . . . 1674

388 (House Bill No. 665; Arntzen) LICENSING AND REGULATING ATHLETIC TRAINERS; ESTABLISHING A BOARD OF ATHLETIC TRAINERS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING TERMS OF LICENSURE; AND PROVIDING VIOLATIONS AND PENALTIES . . . . . 1683

389 (House Bill No. 668; Stahl) ESTABLISHING A PROCEDURE FOR PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AUTHORIZED TO REQUIRE THE SUBMISSION OF FINGERPRINTS BY LICENSE APPLICANTS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-1-201 AND 37-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 1687



390 (*House Bill No. 687; Jones*) EXTENDING INSURANCE AND HEALTH PLAN COVERAGE FOR WELL-CHILD CARE FROM AGE 2 TO AGE 7; AMENDING SECTIONS 2-18-704, 33-22-303, 33-22-512, 33-30-1014, 33-31-301, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1688

391 (*House Bill No. 831; McNutt*) REVISING WATER LAWS IN CLOSED BASINS; DEFINING TERMS IN WATER USE LAWS; AMENDING REQUIREMENTS FOR AN APPLICATION TO APPROPRIATE GROUND WATER IN A CLOSED BASIN; PROVIDING THAT CERTAIN APPLICATIONS TO APPROPRIATE SURFACE WATER ARE EXEMPT FROM CLOSED BASIN REQUIREMENTS; PROVIDING REQUIREMENTS FOR HYDROGEOLOGIC ASSESSMENTS, MITIGATION PLANS, AND AQUIFER RECHARGE PLANS; PROVIDING MINIMUM WATER QUALITY STANDARDS FOR CERTAIN DISCHARGES OF EFFLUENT; REQUIRING THAT DATA BE SUBMITTED TO THE BUREAU OF MINES AND GEOLOGY; PROVIDING FOR RULEMAKING; PROVIDING FOR A CASE STUDY AND REQUIREMENTS AND A FEE FOR PARTICIPATION IN THE CASE STUDY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-311, 85-2-329, 85-2-330, 85-2-335, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-343, 85-2-344, AND 85-2-506, MCA; REPEALING SECTION 85-2-337, MCA; DIRECTING THE AMENDMENT OF ARM 36.12.101 AND 36.12.120; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 1699

392 (*House Bill No. 840; Hilbert*) ALLOWING FOR GENERIC SPECIALTY LICENSE PLATES FOR TRAILERS; ALLOWING FOR PERMANENT REGISTRATION USING CERTAIN SPECIALTY PLATES; AMENDING SECTIONS 61-3-332, 61-3-479, 61-3-481, AND 61-3-562, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . 1723

393 (*Senate Bill No. 48; Esp*) GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO APPROVE MEDICAL CARE FOR THE CHILD UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE MEDICAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 20-5-412 AND 20-5-420, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 1727

394 (*Senate Bill No. 71; Gebhardt*) REQUIRING A STATE AGENCY TO STATE IN ITS NOTICE OF PROPOSED RULEMAKING THE DATE AND MANNER IN WHICH IT GAVE NOTICE OF ITS INITIAL RULEMAKING EFFORTS TO THE PRIMARY SPONSOR OF THE IMPLEMENTED LEGISLATION; PROVIDING FOR THE LEGAL EFFECT OF THE LACK OF NOTICE TO A PRIMARY SPONSOR OF INTENDED RULEMAKING; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 1733

395 (*Senate Bill No. 94; Esp*) REMOVING THE REQUIREMENT THAT WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BE LICENSED AND REGULATED ENTITIES THROUGH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 50-57-101, 50-57-102, AND 50-57-105, MCA . . . . . 1737

396 (*Senate Bill No. 131; Cobb*) REVISING LAND BANKING LAWS; EXTENDING THE TERMINATION DATE FOR THE SALE OF STATE TRUST LAND AND PURCHASE OF REPLACEMENT PROPERTY THROUGH THE LAND BANKING PROGRAM; DECREASING THE TIMEFRAMES FOR POSTING OF A BID BOND; REDUCING THE PERCENTAGE USED FOR DETERMINING A MINIMUM BID BOND;

REDUCING THE NUMBER OF DAYS PRIOR TO A SALE THAT A LESSEE MAY CANCEL A LAND BANKING SALE; PROVIDING FOR PAYMENT OF ESTIMATED SALE PREPARATION COSTS; PROVIDING FOR A 60-YEAR ACCOUNTING PERIOD FOR FIGURING A REASONABLE ANNUAL RATE OF RETURN; AMENDING SECTIONS 77-2-363, 77-2-364, AND 77-2-366, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1740

397 (*Senate Bill No. 133; Essmann*) PROVIDING THAT INTERESTS IN UNMATURED LIFE INSURANCE CONTRACTS ARE EXEMPT FROM EXECUTION OF JUDGMENT; AMENDING SECTIONS 25-13-608 AND 25-13-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1742

398 (*Senate Bill No. 146; Shockley*) GENERALLY REVISING THE JUVENILE DELINQUENCY INTERVENTION ACT AND RELATED PROVISIONS; CLARIFYING THE PURPOSE OF THE ACT; REVISING THE DUTIES OF THE DEPARTMENT OF CORRECTIONS, THE OFFICE OF COURT ADMINISTRATOR, THE COST CONTAINMENT REVIEW PANEL, THE DISTRICT COURT COUNCIL, AND YOUTH COURTS RELATING TO IMPLEMENTATION OF THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REQUIRING JUDICIAL DISTRICTS TO PARTICIPATE IN THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REVISING THE DEPARTMENT OF CORRECTIONS' RULEMAKING AUTHORITY; REQUIRING THE DISTRICT COURT COUNCIL TO ADOPT CERTAIN POLICIES AND PROCEDURES; REMOVING COUNTIES' OBLIGATION TO PAY CERTAIN COSTS RELATED TO JUVENILE OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES; AMENDING SECTIONS 41-5-103, 41-5-112, 41-5-121, 41-5-124, 41-5-130, 41-5-131, 41-5-132, 41-5-1503, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, 41-5-2011, 52-5-109, AND 53-1-203, MCA; REPEALING SECTIONS 41-5-104 AND 41-5-123, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1744

399 (*Senate Bill No. 157; Ryan*) GENERALLY REVISING INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; REMOVING REDUNDANT REFERENCES FOR REVOKING OR REFUSING TO ISSUE AN INSURANCE CONSULTANT LICENSE; AMENDING SECTIONS 33-1-201, 33-1-311, 33-4-312, 33-17-211, 33-17-214, 33-17-232, 33-17-511, 33-17-1103, 33-18-235, 33-19-105, 33-20-1303, 33-20-1315, 33-22-121, 33-22-122, 33-22-513, 33-22-1517, 33-22-2001, 33-22-2002, 33-22-2004, 33-25-212, 33-25-214, 33-30-1015, 33-31-111, 33-31-311, 33-35-103, 33-35-306, 33-38-105, AND 50-4-703, MCA; REPEALING SECTIONS 33-17-506 AND 33-17-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES . . . . . 1767

400 (*Senate Bill No. 158; Cocchiarella*) ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO AGREEMENTS WITH AGENCIES OF OTHER STATES TO ALLOW RECIPROCAL REGISTRATION OF INTRASTATE AND INTERSTATE MOTOR CARRIERS, PRIVATE MOTOR CARRIERS, AND FREIGHT FORWARDER AND BROKER INDUSTRIES; SPECIFYING USE OF CERTAIN FEES IMPOSED ON MOTOR CARRIERS; AND AMENDING SECTION 61-3-708, MCA . . . . . 1787

401 (*Senate Bill No. 162; Schmidt*) REVISING THE MONTANA GENETICS PROGRAM TO EXPAND THE GENETIC AND METABOLIC CONDITIONS FOR WHICH NEWBORNS ARE SCREENED AND TO ALLOW THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN

SERVICES TO CONTRACT FOR FOLLOWUP SERVICES; AND AMENDING SECTIONS 50-19-203 AND 50-19-211, MCA . . . . . 1788

402 (*Senate Bill No. 172; Tropila*) REVISING THE LOBBYING LAWS TO CLARIFY THE APPLICATION OF THE LAWS TO THE LEGISLATURE AND LEGISLATORS; AND AMENDING SECTIONS 5-7-102 AND 5-7-209, MCA . . . . . 1789

403 (*Senate Bill No. 184; Hawks*) REVISING THE LAW GOVERNING CONSTRUCTION PROJECTS BY THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; CLARIFYING PROJECTS THAT DO NOT NEED ARCHITECTURAL AND ENGINEERING REVIEW; INCREASING THE AMOUNT OF CONSTRUCTION PROJECTS THAT DO NOT REQUIRE LEGISLATIVE CONSENT; AMENDING SECTIONS 18-2-102 AND 22-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1791

404 (*Senate Bill No. 192; Essmann*) CREATING THE OFFENSE OF CRIMINAL INVASION OF PERSONAL PRIVACY . . . . . 1794

405 (*Senate Bill No. 209; Essmann*) TRANSFERRING REGISTRATION AND OVERSIGHT OF PROCESS SERVERS AND LEVYING OFFICERS FROM THE CLERKS OF DISTRICT COURT TO THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; PROVIDING FOR A PROCESS SERVER TO BE ON THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; REQUIRING REGISTRATION OF PROCESS SERVERS WITH EXCEPTIONS; AMENDING SECTIONS 2-15-1781, 25-1-1101, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 25-3-105, 25-3-201, 25-3-203, 25-3-204, 25-3-302, 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, AND 37-60-405, MCA; REPEALING SECTIONS 25-1-1103, 25-1-1105, AND 25-1-1106, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1795

406 (*Senate Bill No. 243; Balyeat*) REVISING FISH AND GAME LAWS; PROVIDING FREE CLASS AAA RESIDENT COMBINATION SPORTS AND CLASS A RESIDENT FISHING LICENSES FOR CERTAIN MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY PERSONNEL FOR UP TO 5 YEARS; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO RECOUP THE COST OF ISSUING FREE LICENSES ON A QUARTERLY BASIS; AMENDING SECTIONS 87-2-711 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1804

407 (*Senate Bill No. 253; Cooney*) ALLOWING CERTAIN BROADCAST CAMPAIGN ADVERTISING MATERIAL AND AN AFFIDAVIT ABOUT THE TRUTH OF THE CONTENT TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE COUNTY ATTORNEY TO INVESTIGATE AND PROSECUTE ALLEGED FALSE SWEARING IN REGARD TO CERTAIN CAMPAIGN ADVERTISING MATERIAL THAT IS SWORN TO BE TRUTHFUL AND VERIFIABLE; INCREASING THE POTENTIAL FINE FOR FALSE SWEARING ABOUT THE ADVERTISING CONTENT; AND AMENDING SECTIONS 13-37-111, 13-37-113, 13-37-124, AND 45-7-202, MCA . . . . 1807

408 (*Senate Bill No. 261; Lewis*) INCREASING THE ANNUAL PAYMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COUNTIES FOR JUNK VEHICLE COLLECTIONS; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1811

409 (*Senate Bill No. 293; Laible*) ESTABLISHING A STATE POLICY FOR MANAGEMENT OF PUBLIC FOREST LANDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO

	SUPPORT RESTORATION AND SUSTAINABLE FOREST MANAGEMENT PRACTICES; REQUIRING PROMOTION OF FOREST MANAGEMENT ACTIVITIES WITHIN AND ADJACENT TO THE WILDLAND URBAN INTERFACE; AND GRANTING AUTHORITY TO INTERVENE IN LITIGATION OR APPEALS OF FEDERAL FOREST MANAGEMENT PROJECTS . . . . .	1811
410	<i>(Senate Bill No. 314; Steinbeisser)</i> REVISING THE WARM WATER GAME FISH SURCHARGE AND STAMP TO REQUIRE THAT A PERSON WHO DESIRES TO FISH IN CERTAIN DESIGNATED WATERS IN WHICH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY ARE PLANTED MUST PURCHASE A WARM WATER GAME FISH STAMP; AMENDING SECTION 87-3-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . .	1813
411	<i>(Senate Bill No. 321; Brueggeman)</i> PROVIDING FOR THE CREATION AND FUNCTIONS OF BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS . . . . .	1814
412	<i>(Senate Bill No. 324; Jackson)</i> REQUIRING AN AGENCY THAT REQUIRES AN AQUIFER TEST TO FORWARD COPIES OF THE TEST RESULTS TO THE BUREAU OF MINES AND GEOLOGY; REQUIRING A WELL DRILLER TO DESIGNATE THE LOCATION OF THE WELL BEING DRILLED USING TWO METHODS; DEFINING "AQUIFER TEST"; AND AMENDING SECTIONS 85-2-501 AND 85-2-516, MCA . . . . .	1833
413	<i>(Senate Bill No. 350; Perry)</i> CREATING THE OFFENSE OF CRIMINAL DESTRUCTION OF OR TAMPERING WITH A COMMUNICATION DEVICE; AND PROVIDING PENALTIES . . . . .	1834
414	<i>(Senate Bill No. 354; Lind)</i> DEFINING AND CLARIFYING THE OPERATION OF THE MEDICAID REIMBURSEMENT CONVERSION FACTOR FOR PHYSICIANS; AND ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT POLICY ADJUSTERS . . . . .	1835
415	<i>(Senate Bill No. 372; Balyeat)</i> CREATING A RESIDENT WOLF LICENSE AND A NONRESIDENT WOLF LICENSE; PROVIDING FOR THE ANNUAL AUCTION OR LOTTERY OF A WOLF LICENSE AND A GRIZZLY BEAR LICENSE; ESTABLISHING RESTITUTION FOR THE ILLEGAL TAKING, KILLING, OR POSSESSION OF A WOLF; PROVIDING THAT A PERSON WHO IS RESPONSIBLE FOR THE DEATH OF A WOLF MAY NOT WASTE THE ANIMAL BY ABANDONING THE HEAD OR HIDE IN THE FIELD, EXCEPT A WOLF THAT IS KILLED WHILE ATTACKING, KILLING, OR THREATENING TO KILL A PERSON OR LIVESTOCK; AMENDING SECTIONS 87-1-111 AND 87-3-102, MCA; AND PROVIDING EFFECTIVE DATES . . . . .	1836
416	<i>(Senate Bill No. 376; Jackson)</i> PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENTER INTO A CONTRACT WITH THE UNITED STATES FOR WATER HELD IN FEDERAL RESERVOIRS AS A MEANS OF PROTECTING THE STATE'S INTEREST IN THOSE WATERS; PROVIDING THAT THE STATE MAY CONTRACT FOR WATER FROM EXISTING FEDERAL RESERVOIRS IF WHEN THE WATER IS PUT TO BENEFICIAL USE, IT IS USED WITHIN THE BASIN IN WHICH THE RESERVOIR IS LOCATED; LIMITING THE AMOUNT OF WATER THAT CAN BE LEASED FROM THE STATE AS THE RESULT OF CONTRACTS FOR WATER FROM FEDERAL RESERVOIRS WHEN THE WATER WILL BE PUT TO BENEFICIAL USE IN A BASIN OTHER THAN THE BASIN WHERE THE FEDERAL RESERVOIR IS LOCATED; PROVIDING THAT THERE IS A LIMIT TO THE AMOUNT OF WATER FOR WHICH THE DEPARTMENT MAY	

CONTRACT FROM ANY FEDERAL RESERVOIR; AMENDING SECTION 85-2-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1839

417 (*Senate Bill No. 379; Laslovich*) CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1841

418 (*Senate Bill No. 403; Lind*) INCREASING THE AMOUNT OF LAND INCLUDED IN THE DISABLED OR DECEASED VETERANS' RESIDENTIAL PROPERTY TAX EXEMPTION TO LAND NOT TO EXCEED 5 ACRES FROM A LOT; AMENDING SECTION 15-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1842

419 (*Senate Bill No. 412; Brueggeman*) EXEMPTING CERTAIN UNIVERSITY PROJECTS THAT DO NOT INVOLVE STATE APPROPRIATIONS FROM CERTAIN STATE CONSTRUCTION AND CONTRACTING LAWS; AMENDING SECTIONS 18-2-102 AND 20-25-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1843

420 (*Senate Bill No. 413; Moss*) CLARIFYING REQUIREMENTS FOR THE DEPOSIT OF MONEY RECEIVED BY STATE AGENCIES; PROVIDING A PROCESS FOR A STATE AGENCY TO PROPOSE AND RECEIVE APPROVAL FOR A SPECIAL DEPOSIT SCHEDULE FOR MONEY COLLECTED BY THE AGENCY; AND AMENDING SECTIONS 15-1-232, 17-6-105, 23-1-105, 81-3-107, AND 87-1-601, MCA. . . . . 1845

421 (*Senate Bill No. 424; Moss*) ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT; PROVIDING GUIDANCE AND AUTHORITY TO CHARITABLE ORGANIZATIONS CONCERNING THE MANAGEMENT AND INVESTMENT OF FUNDS HELD BY THOSE ORGANIZATIONS; IMPOSING DUTIES ON THOSE WHO MANAGE AND INVEST CHARITABLE FUNDS; PROVIDING ADDITIONAL PROTECTIONS FOR CHARITIES AND THE INTERESTS OF DONORS; AMENDING SECTIONS 72-30-101, 72-30-102, 72-30-103, AND 72-30-207, MCA; AND REPEALING SECTIONS 72-30-201, 72-30-202, 72-30-203, 72-30-204, 72-30-205, AND 72-30-206, MCA . . . . . 1849

422 (*Senate Bill No. 431; Lind*) REVISING THE REQUIREMENTS FOR FLOW-THROUGH HOT SPRINGS POOLS; AND AMENDING SECTION 50-53-115, MCA . . . . . 1855

423 (*Senate Bill No. 446; Perry*) GENERALLY REVISING THE LAWS RELATING TO REVIEW OF PUBLIC WATER AND SEWAGE SYSTEMS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REMOVING INDUSTRIAL WASTE DISCHARGE SYSTEMS FROM DEPARTMENT REVIEW; REMOVING THE EXEMPTION FROM DEPARTMENT REVIEW OF PUBLIC SEWAGE SYSTEMS THAT HAVE WATER QUALITY DISCHARGE PERMITS; EXPRESSLY AUTHORIZING ADOPTION OF MANAGERIAL AND TECHNICAL CAPACITY RULES; AUTHORIZING THE ADOPTION OF SOURCE WATER PROTECTION REQUIREMENTS; ELIMINATING PROVISIONS THAT DUPLICATE PROVISIONS CONTAINED IN THE WATER QUALITY STATUTES; AND AMENDING SECTIONS 37-42-102, 75-6-102, 75-6-103, 75-6-104, 75-6-112, AND 75-6-120, MCA. . . . . 1856

424 (*Senate Bill No. 447; Perry*) REVISING VICTIMS' RIGHTS LAWS AS THEY RELATE TO ADULT OFFENDERS; PROVIDING THAT VICTIMS OF CRIMINAL OFFENSES MUST BE PROVIDED, UPON REQUEST, ONE FREE COPY OF CERTAIN DOCUMENTS FILED IN A CRIMINAL CASE; PROVIDING THAT A VICTIM HAS A RIGHT TO BE

	ACCOMPANIED BY A VICTIM ADVOCATE DURING INTERVIEWS; AND AMENDING SECTIONS 46-24-106 AND 46-24-201, MCA . . . . .	1862
425	<i>(Senate Bill No. 461; Bales)</i> REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO RELEASE ALL OR A PORTION OF A BOND IF THE DEPARTMENT IS SATISFIED THAT RECLAMATION OF COAL AND URANIUM OPERATIONS HAS BEEN COMPLETED; CLARIFYING WRITTEN FINDINGS AND RECOMMENDATIONS; AND AMENDING SECTION 82-4-232, MCA. . . . .	1864
426	<i>(Senate Bill No. 491; Moss)</i> CHANGING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT TO THE HOUSING MONTANA FUND; PROVIDING THAT MONEY IN THE HOUSING MONTANA FUND MAY BE USED FOR ACQUISITION OF LAND FOR HOUSING DEVELOPMENTS, LAND BANKING AND LAND TRUSTS, AND SHORT-TERM SITE-BASED HOUSING VOUCHERS FOR NEEDY INDIVIDUALS; ADDING STATE GOVERNMENT OR STATE AGENCIES AND PROGRAMS TO THE LIST OF ORGANIZATIONS ELIGIBLE FOR LOANS; AND AMENDING SECTIONS 90-6-107, 90-6-131, 90-6-132, 90-6-133, AND 90-6-134, MCA . . . . .	1869
427	<i>(Senate Bill No. 492; Gebhardt)</i> PROVIDING AN ALTERNATIVE APPRAISAL METHOD FOR CERTAIN PURCHASES OF REAL PROPERTY OR CONSERVATION EASEMENTS BY A COUNTY; AMENDING SECTION 7-8-2202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	1872
428	<i>(Senate Bill No. 523; Laslovich)</i> PROVIDING THAT THE WORKERS' COMPENSATION COURT IS A COURT OF RECORD; AND AMENDING SECTION 3-1-102, MCA. . . . .	1873
429	<i>(Senate Bill No. 540; Jackson)</i> ALLOWING POSSESSION OF AN ANTIQUE ILLEGAL GAMBLING DEVICE BY A LICENSED RETAIL BUSINESS ESTABLISHMENT FOR PURPOSES OF RESALE AND NOT FOR OPERATION; AMENDING SECTIONS 23-5-112, 23-5-152, AND 23-5-153, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .	1873
430	<i>(Senate Bill No. 542; Ryan)</i> REVISING PAYMENT OPTIONS FOR GROUP LIFE INSURANCE COVERAGE; AND AMENDING SECTIONS 33-20-1101, 33-20-1111, AND 33-20-1209, MCA . . . . .	1879
431	<i>(House Bill No. 6; Kasten)</i> REVISING AND 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; MAKING PERMANENT REVISIONS TO THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; REPEALING SECTION 11, CHAPTER 307, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES. . . . .	1882
432	<i>(House Bill No. 116; Ripley)</i> GENERALLY REVISING RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT LAWS; ELIMINATING THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT AND THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT; CREATING THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT AND THE NATURAL RESOURCES PROJECTS STATE SPECIAL REVENUE ACCOUNT; REALLOCATING CERTAIN OIL AND GAS PRODUCTION TAXES AND METALLIFEROUS MINES TAXES	

INTO THE NEW SPECIAL REVENUE ACCOUNTS; REALLOCATING CERTAIN RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST FUND INTEREST DISTRIBUTIONS; CLARIFYING THE USE OF THE RESOURCE INDEMNITY TRUST FUND; ELIMINATING THE CAP ON THE GROUND WATER ASSESSMENT SPECIAL REVENUE ACCOUNT; CLARIFYING THE USE OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-36-331, 15-37-117, 15-38-106, 15-38-202, 15-38-203, 17-5-702, 17-7-502, 19-5-404, 75-1-1101, 75-10-621, 75-10-704, 75-10-743, 80-7-823, 85-1-102, 85-1-603, 85-1-605, 85-1-606, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-631, 85-2-905, 90-2-1103, 90-2-1111, AND 90-2-1121, MCA; REPEALING SECTIONS 85-1-604 AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1890

433 *(House Bill No. 304; Furey)* CREATING THE WATER POLICY INTERIM COMMITTEE; PROVIDING FOR RESEARCH AND STUDY ON WATER-RELATED ISSUES; REQUIRING THAT CERTAIN WATER RIGHT REPORTS AND UPDATES BE PROVIDED TO THE WATER POLICY INTERIM COMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1920

434 *(House Bill No. 353; McGillvray)* PROVIDING FOR THE RECORDING AND TRANSCRIPTION BY A PEACE OFFICER OF A TELEPHONIC APPLICATION BY THE PEACE OFFICER FOR A SEARCH WARRANT; AND AMENDING SECTION 46-5-222, MCA. . . . . 1922

435 *(House Bill No. 357; Cohenour)* REVISING LAWS PERTAINING TO BLIND VENDORS; PROVIDING FOR THE PLACEMENT OF VENDING MACHINES ON STATE HIGHWAYS BY BLIND VENDORS; AMENDING SECTION 60-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1923

436 *(House Bill No. 406; Clark)* EXPANDING ACCESS TO HEALTH CARE SERVICES BY ESTABLISHING A GRANT PROGRAM FOR COMMUNITY HEALTH CENTERS; CREATING AN ADVISORY GROUP; REQUIRING A REPORT TO THE LEGISLATURE; TRANSFERRING GENERAL FUND MONEY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE. . . . . 1924

437 *(House Bill No. 592; Wilson)* APPROPRIATING MONEY TO THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS TO DIRECT MOTORISTS TO THE MONTANA VETERANS' MEMORIAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1928

438 *(House Bill No. 715; Olson)* REQUIRING A PORTION OF THE RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST BE USED FOR CLEAN COAL RESEARCH AND DEVELOPMENT PROJECTS OR RENEWABLE RESOURCE RESEARCH AND DEVELOPMENT PROJECTS; AMENDING SECTIONS 90-3-1002 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1928

439 *(House Bill No. 729; Raser)* REVISING ADVERTISING AND PUBLICATION REQUIREMENTS FOR BOARDS OF COUNTY COMMISSIONERS AND CERTAIN OTHER UNITS OF LOCAL GOVERNMENT; PROVIDING THAT A NEWSLETTER OR OTHER PUBLICATION PRODUCED BY A LOCAL GOVERNMENT IS NOT CONSIDERED A NEWSPAPER FOR COUNTY ADVERTISING PURPOSES; AND AMENDING SECTIONS 7-1-2121 AND 7-5-2411, MCA 1931

- 440

*(House Bill No. 768; Gallik)* REVISING THE LAW RELATED TO OSTENSIBLE AGENCY; AND AMENDING SECTION 28-10-103, MCA

1933
- 441

*(Senate Bill No. 41; Elliott)* PROVIDING THAT A CITY OR TOWN MAY NOT SERVE AS A PASS-THROUGH ENTITY BY USING ITS POWER OF EMINENT DOMAIN TO OBTAIN PROPERTY TO SELL, LEASE, OR PROVIDE TO A PRIVATE ENTITY FOR THE PURPOSES OF URBAN RENEWAL; PROVIDING THAT FOR THE PUBLIC USE OF URBAN RENEWAL, REDEVELOPMENT AND REHABILITATION OF PROPERTY THAT WAS OBTAINED THROUGH CONDEMNATION MAY BE USED ONLY FOR A PUBLIC USE; AMENDING SECTIONS 7-15-4204, 7-15-4206, 7-15-4258, AND 7-15-4259, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .

1933
- 442

*(Senate Bill No. 49; Esp)* GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO ENROLL THE CHILD IN SCHOOL, DISCUSS CERTAIN SCHOOL-RELATED MATTERS, AND CONSENT TO SCHOOL-RELATED MEDICAL CARE UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-412, AND 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . .

1938
- 443

*(Senate Bill No. 51; Hawks)* REVISING GROWTH POLICY AND SUBDIVISION LAWS; REQUIRING GROWTH POLICIES TO EVALUATE THE POTENTIAL FOR FIRE AND WILDLAND FIRE; INCLUDING FIRE AND WILDLAND FIRE AMONG THE NATURAL HAZARDS THAT LOCAL SUBDIVISION REGULATIONS ARE REQUIRED TO REASONABLY ADDRESS; REQUIRING SUBDIVISION REGULATIONS TO IDENTIFY AREAS UNSUITABLE FOR DEVELOPMENT UNLESS CERTAIN MITIGATION MEASURES ARE TAKEN, INCLUDING USE OF CONSTRUCTION TECHNIQUES PROVIDED IN DEPARTMENT OF LABOR AND INDUSTRY ADMINISTRATIVE RULES; PROHIBITING A GOVERNING BODY FROM INCLUDING CERTAIN BUILDING REGULATIONS IN SUBDIVISION REGULATIONS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES THAT IDENTIFY CONSTRUCTION TECHNIQUES TO MITIGATE FIRE HAZARDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES TO ADDRESS DEVELOPMENT IN THE WILDLAND-URBAN INTERFACE; AMENDING SECTIONS 76-1-601, 76-3-501, 76-3-504, AND 76-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . .

1947
- 444

*(Senate Bill No. 69; Wanzenried)* INCREASING THE ALLOCATION OF COAL SEVERANCE TAX TRUST FUNDS AVAILABLE FOR THE VALUE-ADDED LOAN PROGRAM, THE INFRASTRUCTURE LOAN PROGRAM, AND THE MONTANA ECONOMIC DEVELOPMENT LOAN PROGRAM; AMENDING SECTIONS 17-6-305 AND 17-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .

1953
- 445

*(Senate Bill No. 100; Jent)* REVISING THE LAW RELATING TO OUTFITTING WITHOUT A LICENSE; DEFINING "OUTFITTING"; REVISING PENALTIES AND PROVIDING FOR ADDITIONAL SENTENCING CONDITIONS THAT MAY BE APPLIED FOR VIOLATIONS; AMENDING SECTION 37-47-344, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .

1954
- 446

*(Senate Bill No. 104; Squires)* SPECIFYING THE TIME WITHIN WHICH A PROSECUTION FOR CERTAIN SEX OFFENSES MAY BE



COMMENCED WHEN THE IDENTITY OF THE SUSPECT WHO IS CHARGED WITH THE OFFENSE IS ESTABLISHED BY DNA EVIDENCE; AND AMENDING SECTION 45-1-205, MCA . . . . . 1956

447 (*Senate Bill No. 121; Elliott*) PROHIBITING THE SALE AND RESTRICTING THE DISCLOSURE AND USE OF TAX RETURN INFORMATION BY A TAX RETURN PREPARER; PROVIDING RULEMAKING AUTHORITY; PROHIBITING THE DEPARTMENT OF REVENUE FROM PROVIDING INDIVIDUAL INCOME TAX RETURN PREPARATION SERVICES; ALLOWING THE DEPARTMENT OF REVENUE TO PROVIDE FOR THE FILING OF ELECTRONIC INDIVIDUAL INCOME TAX FORMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1958

448 (*Senate Bill No. 128; Laslovich*) ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE WATER RIGHTS THAT IT HOLDS IN FEE SIMPLE TO INSTREAM FLOW PURPOSES TO PROTECT, MAINTAIN, OR ENHANCE STREAMFLOW TO BENEFIT FISHERY RESOURCES; REPEALING THE TERMINATION DATE ON LEASING OF WATER RIGHTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR INSTREAM FLOW PURPOSES; PROVIDING ADDITIONAL CRITERIA THAT MUST BE MET AND PROCEDURES THAT MUST BE FOLLOWED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE AN APPROPRIATION RIGHT OR LEASED WATER RIGHT TO INSTREAM FLOW PURPOSES TO ENSURE THAT A CHANGE IN APPROPRIATION RIGHT WILL NOT ADVERSELY AFFECT OTHER WATER RIGHT HOLDERS; AMENDING SECTIONS 85-2-102, 85-2-308, 85-2-402, 85-2-419, 85-2-436, 85-2-602, AND 87-1-257, MCA; REPEALING SECTIONS 85-2-437 AND 85-2-438, MCA, SECTION 11, CHAPTER 658, LAWS OF 1989, SECTIONS 4 AND 7, CHAPTER 740, LAWS OF 1991, AND SECTIONS 5, 6, 7, AND 9, CHAPTER 123, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1960

449 (*Senate Bill No. 130; Story*) GENERALLY REVISING LAWS RELATING TO FIRES; REVISING LAWS GOVERNING THE DEPARTMENT OF JUSTICE'S FIRE PREVENTION AND INVESTIGATION SECTION AND LAWS REFERENCING AND GOVERNING LOCAL GOVERNMENTAL FIRE AGENCIES; STANDARDIZING USAGE OF THE TERM "GOVERNMENTAL FIRE AGENCY"; CLARIFYING THAT A CHIEF OF A GOVERNMENTAL FIRE AGENCY MAY RECEIVE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ELIMINATING RESTRICTIONS ON PAY FOR SPECIAL FIRE INSPECTORS; CLARIFYING THE PENALTY FOR SETTING OR LEAVING A FIRE THAT CAUSES DAMAGE AND INCREASING THE MINIMUM FINE; ELIMINATING DUPLICATE PROVISIONS PROHIBITING CERTAIN CAMPFIRES AND THROWING LIGHTED MATERIAL; REQUIRING FIRE INCIDENT REPORTS TO BE FILED WITH THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 2-7-501, 2-15-1519, 2-15-2005, 7-6-204, 18-8-202, 25-13-613, 39-71-118, 40-6-402, 44-5-103, 44-5-303, 46-18-261, 50-3-101, 50-3-102, 50-3-106, 50-5-215, 50-19-403, 50-37-107, 50-37-108, 50-37-109, 50-60-202, 50-61-102, 50-61-114, 50-61-115, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-112, 50-63-102, 50-63-103, 50-63-202, 50-63-203, 50-63-401, 50-63-402, 50-63-404, 50-78-102, 52-2-733, 52-2-734, 52-4-205, 53-20-307, 61-8-102, 61-8-364, 61-9-402, AND 75-10-725, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1978

450 (*Senate Bill No. 147; Shockley*) CLARIFYING THE AUTHORITY OF THE PRESIDING OFFICER OF A BOARD OF COUNTY COMMISSIONERS TO CLOSE AREAS TO ACCESS UPON A DECLARATION OF AN

	EMERGENCY OR DISASTER; AMENDING SECTION 10-3-406, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . .	2006
451	<i>(Senate Bill No. 165; Brueggeman)</i> GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; INCLUDING DEFERRED DEPOSIT LENDERS IN THE DEFINITION OF REGULATED LENDERS; INCREASING LICENSING FEES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ANNUALLY EXAMINE EACH DEFERRED DEPOSIT LENDER'S OPERATION; MODIFYING BOOKKEEPING REQUIREMENTS FOR DEFERRED DEPOSIT LENDERS; PROHIBITING ADDITIONAL DEFERRED DEPOSIT LOANS TO CONSUMERS WITH AN OUTSTANDING DEFERRED DEPOSIT LOAN; AUTHORIZING THE DEPARTMENT TO CONDUCT INVESTIGATIONS AND ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; AND AMENDING SECTIONS 31-1-111, 31-1-702, 31-1-703, 31-1-705, 31-1-706, 31-1-711, 31-1-712, 31-1-713, 31-1-714, 31-1-715, 31-1-721, AND 31-1-723, MCA . . . . .	2007
452	<i>(Senate Bill No. 166; Tropila)</i> REVISING LAWS RELATING TO FISH AND GAME LICENSURE; PROVIDING FOR THE ISSUANCE OF FREE WILDLIFE CONSERVATION LICENSES TO RESIDENT MINORS WHO ARE 12 YEARS OF AGE OR OLDER AND UNDER 15 YEARS OF AGE AND TO RESIDENTS 62 YEARS OF AGE OR OLDER; PROVIDING THAT RESIDENTS AND CERTAIN NONRESIDENTS WHO HAVE BEEN AWARDED A PURPLE HEART IN SERVICE WITH THE U.S. ARMED FORCES MAY FISH AND HUNT GAME BIRDS WITH ONLY A WILDLIFE CONSERVATION LICENSE; PROVIDING FOR THE TRANSFER OF MONEY FROM THE GENERAL FUND TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS GENERAL LICENSE ACCOUNT TO COMPENSATE FOR LICENSE REVENUE LOST THROUGH THE ISSUANCE OF THE FREE LICENSES AND EXTENSION OF PRIVILEGES TO RECIPIENTS OF A PURPLE HEART; AMENDING SECTIONS 87-2-202, 87-2-801, 87-2-805, AND 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . .	2017
453	<i>(Senate Bill No. 173; Juneau)</i> REVISING LAWS RELATED TO THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; TRANSFERRING ADMINISTRATIVE ATTACHMENT FOR THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF COMMERCE; ADDING A MEMBER TO THE COMMISSION; REPEALING THE TERMINATION DATE OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; AMENDING SECTIONS 90-1-131 AND 90-1-135, MCA; REPEALING SECTION 19, CHAPTER 512, LAWS OF 1999, SECTION 5, CHAPTER 69, LAWS OF 2001, AND SECTIONS 3 AND 4, CHAPTER 460, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE . . . . .	2021
454	<i>(Senate Bill No. 200; Lewis)</i> AUTHORIZING LITIGATION FOR NATURAL RESOURCE DAMAGES AND RESTORATION AT THE UPPER BLACKFOOT MINING COMPLEX, INCLUDING THE MIKE HORSE DAM AND MINE; ESTABLISHING THE NATURAL RESOURCE PROGRAM POLICY COMMITTEE TO OVERSEE THIS LITIGATION AND OTHER NATURAL RESOURCE DAMAGE LITIGATION; AUTHORIZING LEGISLATIVE OVERSIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	2023

455 (*Senate Bill No. 201; Laible*) GENERALLY REVISING LAND USE LAWS; ALLOWING LOCAL GOVERNMENTS TO ADOPT GROWTH POLICIES THAT ADDRESS INFRASTRUCTURE PLANNING; ALLOWING CERTAIN GOVERNING BODIES TO ASSESS PLANNING FEES; EXEMPTING CERTAIN LAND DIVISIONS FROM REVIEW; AMENDING SECTIONS 76-1-103, 76-1-601, 76-3-605, 76-3-608, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2024

456 (*Senate Bill No. 213; Cobb*) PROVIDING THAT THE ESTIMATED FAIR MARKET VALUE MUST BE DETERMINED BY A MONTANA-LICENSED AND MONTANA-CERTIFIED APPRAISER; AMENDING SECTIONS 77-2-213, 77-2-363, AND 77-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2032

457 (*Senate Bill No. 227; Laslovich*) PROVIDING THAT A JUSTICE'S COURT WRIT OF EXECUTION MAY BE SERVED ANYWHERE IN THE STATE; REVISING THE PROCEDURE FOR A JUDGMENT DEBTOR TO CLAIM AN EXEMPTION FROM EXECUTION ON CERTAIN PROPERTY; PROVIDING A PROCEDURE FOR A LEVY ON A TAX REFUND OR OTHER STATE FUNDS THAT ARE DUE TO A JUDGMENT DEBTOR; PROVIDING THAT A LEVYING OFFICER MAY PERFORM CERTAIN TASKS THAT MAY BE PERFORMED BY A SHERIFF OR CONSTABLE; INCREASING THE TIME WHEN A JUSTICE MAY ISSUE AN ALIAS SUMMONS FROM 1 YEAR TO 2 YEARS FROM THE DATE OF THE FILING OF THE COMPLAINT; PROVIDING THAT A PARTY AT THE PARTY'S DISCRETION MAY APPEAR IN CERTAIN JUSTICE'S COURT PRETRIAL PROCEEDINGS BY TELEPHONE CONFERENCE; AND AMENDING SECTIONS 3-10-304, 25-13-212, 25-13-402, 25-14-101, 25-31-409, 25-31-710, AND 25-31-1104, MCA . . . . . 2034

458 (*Senate Bill No. 270; Larson*) REVISING THE FILING DEADLINE FOR INDEPENDENT CANDIDATES AND POLITICAL PARTIES NOT PARTICIPATING IN PRIMARY ELECTIONS; AND AMENDING SECTION 13-10-503, MCA . . . . . 2038

459 (*Senate Bill No. 309; Balyeat*) PROHIBITING THE CONFISCATION OF PRIVATELY OWNED FIREARMS WITHIN THE STATE FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER; AND PROVIDING FOR ENFORCEMENT . . . . . 2038

460 (*Senate Bill No. 342; Squires*) REQUIRING APPLICANTS FOR LICENSURE AS SOCIAL WORKERS AND PROFESSIONAL COUNSELORS TO SUBMIT FINGERPRINTS FOR CRIMINAL BACKGROUND CHECKS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-22-101, 37-22-301, 37-23-101, AND 37-23-202, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 2039

461 (*Senate Bill No. 384; Wanzenried*) ALLOWING A PRIVATE LANDOWNER TO HAVE AN ABANDONED VEHICLE REMOVED FROM THE LANDOWNER'S PROPERTY AFTER MEETING A 5-DAY WAITING PERIOD; AND AMENDING SECTION 61-12-401, MCA . . . . . 2043

462 (*Senate Bill No. 386; Shockley*) INCREASING THE PENALTY FOR PERSONS WHO DRIVE ON PUBLIC HIGHWAYS WITHOUT OBTAINING A VALID DRIVER'S LICENSE; AND AMENDING SECTIONS 61-5-102 AND 61-5-212, MCA . . . . . 2044

463 (*Senate Bill No. 387; Squires*) REQUIRING HEALTH INSURERS TO DISCLOSE INFORMATION ABOUT COVERED BENEFITS FOR CANCER SCREENING; AMENDING SECTIONS 2-18-704, 33-22-244, 33-22-262, 33-22-521, 33-31-102, AND 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 2046

- 464 (*Senate Bill No. 404; Lind*) CLARIFYING LIABILITY FOR FIREFIGHTERS; PROVIDING FOR LEGAL REPRESENTATION OF FIREFIGHTERS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND LOCAL GOVERNMENTAL FIRE AGENCIES TO PAY ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2059
- 465 (*Senate Bill No. 411; Laible*) REVISING ELIGIBILITY FOR ORDERS OF PROTECTION; PROVIDING THAT A VICTIM OF ASSAULT, AGGRAVATED ASSAULT, OR ASSAULT ON A MINOR IS ELIGIBLE FOR AN ORDER OF PROTECTION REGARDLESS OF THE INDIVIDUAL'S RELATIONSHIP TO THE OFFENDER; AMENDING SECTION 40-15-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2060
- 466 (*Senate Bill No. 417; Brown*) AMENDING THE DEFINITION OF SPECIALTY HOSPITAL; PROVIDING FOR ATTESTATION FOR LICENSING SPECIALTY HOSPITALS; PROVIDING FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY; EXTENDING AND REVISING THE MORATORIUM ON LICENSING SPECIALTY HOSPITALS; AMENDING SECTIONS 50-5-101, 50-5-203, AND 50-5-245, MCA; REPEALING SECTION 6, CHAPTER 365, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 2061
- 467 (*Senate Bill No. 436; Gebhardt*) ALLOWING A BOARD OF COUNTY COMMISSIONERS TO LEVY A FEE ON PROPERTY WITHIN A FIRE SERVICE AREA TO FUND WILDLAND FIRE PROTECTION SERVICES; AND AMENDING SECTION 7-33-2404, MCA . . . . . 2074
- 468 (*Senate Bill No. 439; Elliott*) CREATING THE MINERAL ROYALTY BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING REMITORS TO WITHHOLD TAXES ON ROYALTY PAYMENTS MADE TO ROYALTY OWNERS; PROVIDING EXCEPTIONS TO THE WITHHOLDING TAX; MAKING REMITORS LIABLE FOR PAYMENT OF WITHHOLDING TAXES; PROVIDING A WITHHOLDING TAX RATE AND REMITTANCE SCHEDULE; PROVIDING FOR PENALTIES AND INTEREST FOR FAILURE TO REMIT TAX; REQUIRING REMITORS TO PROVIDE ANNUAL STATEMENTS TO ROYALTY OWNERS AND THE DEPARTMENT OF REVENUE; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 2075
- 469 (*Senate Bill No. 448; Wanzenried*) REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO NOTIFY THE OFFICE OF CONSUMER COUNSEL OF PERMIT APPLICATIONS FOR NEW ELECTRICAL GENERATION FACILITIES AND FACILITIES AND UPGRADES PERMITTED UNDER THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE OFFICE OF THE CONSUMER COUNSEL TO COMPLETE A CUSTOMER FISCAL IMPACT ANALYSIS FOR NEW ELECTRICAL GENERATION FACILITIES AND FACILITIES AND UPGRADES PERMITTED UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR THE USE OF THE ANALYSIS; REQUIRING THAT AN APPLICANT PAY COSTS INCURRED BY THE OFFICE OF CONSUMER COUNSEL IN PREPARING A FISCAL IMPACT ANALYSIS; AMENDING SECTIONS 75-1-201, 75-1-205, 75-20-216, AND 75-20-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 2080
- 470 (*Senate Bill No. 449; Gillan*) REQUIRING FUEL EFFICIENCY STANDARDS FOR CERTAIN STATE-OWNED VEHICLES; REQUIRING

A PLAN FOR FUEL AND TRAVEL REDUCTION BY STATE AGENCIES; AND PROVIDING AN EFFECTIVE DATE. . . . . 2088

471 (*Senate Bill No. 478; Weinberg*) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT A COMPREHENSIVE SUICIDE PREVENTION PROGRAM, INCLUDING A SUICIDE PREVENTION OFFICER, A COMPREHENSIVE SUICIDE REDUCTION PLAN, AND A 24-HOUR SUICIDE PREVENTION HOTLINE; AND PROVIDING AN EFFECTIVE DATE . . . . . 2089

472 (*Senate Bill No. 486; Shockley*) REVISING THE OFFENSE OF AGGRAVATED ASSAULT BY INCLUDING IN THE OFFENSE CAUSING REASONABLE APPREHENSION OF SERIOUS BODILY INJURY OR DEATH IN ANOTHER; REVISING THE PENALTY; AND AMENDING SECTION 45-5-202, MCA. . . . . 2092

473 (*Senate Bill No. 505; Squires*) RENEWING THE CERVICAL CANCER TASK FORCE; ADDING A PEDIATRICIAN TO THE TASK FORCE; IDENTIFYING STRATEGIES FOR EDUCATING THE PUBLIC REGARDING AVAILABILITY AND EFFICACY OF HUMAN PAPILLOMAVIRUS VACCINE; AMENDING SECTION 50-1-211, MCA, AND SECTION 4, CHAPTER 404, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2092

474 (*Senate Bill No. 518; Perry*) PROVIDING FOR A CERTIFICATE OF BIRTH RESULTING IN A STILLBIRTH; AMENDING SECTION 50-15-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 2094

475 (*Senate Bill No. 525; Elliott*) CLARIFYING THAT TAX AND FEE REVENUE MUST BE RECORDED AS PRESCRIBED BY THE DEPARTMENT OF ADMINISTRATION IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-35-108, 15-36-331, 15-37-117, 15-38-106, 15-50-311, 15-51-103, 15-53-156, 15-59-108, 15-60-210, 15-65-121, 15-66-102, 15-67-102, 15-68-820, 15-70-101, 15-70-125, 15-72-106, 16-1-306, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-11-114, 16-11-119, 23-5-610, AND 39-71-2321, MCA; REPEALING SECTION 15-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2096

476 (*Senate Bill No. 535; Cocchiarella*) REVISING LAWS RELATING TO ANNUITIES; CREATING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROVIDING FOR EXEMPTIONS FROM THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; ESTABLISHING DUTIES FOR INSURERS, INSURANCE PRODUCERS, AND INDEPENDENT AGENCIES; CREATING THE MONTANA ANNUITY DISCLOSURE ACT; PROVIDING DEFINITIONS; ESTABLISHING DISCLOSURE REQUIREMENTS FOR BUYER'S GUIDES AND DISCLOSURE DOCUMENTS; REQUIRING REPORTS TO ANNUITY CONTRACT HOLDERS; PROVIDING PENALTIES FOR VIOLATIONS OF EITHER ACT; AND PROVIDING AN APPLICABILITY DATE . . . . . 2114

477 (*Senate Bill No. 538; Elliott*) ESTABLISHING A BILL OF RIGHTS DAY FOR THE STATE OF MONTANA. . . . . 2120

478 (*Senate Bill No. 549; Story*) REVISING THE METHOD FOR CLASSIFYING LAND AS AGRICULTURAL FOR PROPERTY TAX PURPOSES; REQUIRING A MINIMUM DOLLAR AMOUNT OF GROSS INCOME FROM AGRICULTURAL PRODUCTION TO QUALIFY AS CLASS THREE AGRICULTURAL LAND; PROVIDING THAT THE MINIMUM DOLLAR AMOUNT FOR GRAZING LAND BE DETERMINED BY AN ANIMAL UNIT MONTH COMPUTATION DETERMINED BY

	MONTANA STATE UNIVERSITY-BOZEMAN; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . .	2121
479	( <i>Senate Bill No. 489; Cocchiarella</i> ) SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO ALLOW UP TO 25 PERCENT OF CERTAIN PUBLIC FUNDS TO BE INVESTED IN PRIVATE CORPORATE CAPITAL STOCK; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	2123
480	( <i>House Bill No. 683; Reinhart</i> ) PROVIDING THAT A FULL GUARDIAN MAY NOT CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE SUSTAINING TREATMENT OR TO A DO NOT RESUSCITATE ORDER IF THE GUARDIAN DOES NOT HAVE CONSENT AUTHORITY PURSUANT TO THE MONTANA RIGHTS OF THE TERMINALLY ILL ACT, THE LAWS PROVIDING FOR DO NOT RESUSCITATE ORDERS, OR A COURT ORDER; AND AMENDING SECTIONS 50-9-106 AND 72-5-321, MCA . . . . .	2125
481	( <i>Senate Bill No. 96; Williams</i> ) GENERALLY REVISING THE LAWS RELATING TO INITIATIVES AND REFERENDUMS; REVISING THE PROCEDURE FOR REVIEWING A PROPOSED BALLOT ISSUE; CHANGING THE ENTITY PREPARING BALLOT STATEMENTS FROM THE ATTORNEY GENERAL TO THE PETITIONER, WITH REVIEW BY THE LEGISLATIVE SERVICES DIVISION AND APPROVAL BY THE ATTORNEY GENERAL FOR INITIATED MEASURES AND PREPARATION BY THE ATTORNEY GENERAL FOR REFERRED MEASURES; REVISING THE ATTORNEY GENERAL'S PROCEDURE FOR REVIEWING PROPOSED BALLOT ISSUES FOR LEGAL SUFFICIENCY; PROVIDING THAT THE SUPREME COURT HAS ORIGINAL JURISDICTION TO HEAR CHALLENGES TO THE ATTORNEY GENERAL'S BALLOT STATEMENTS AND DETERMINATION OF LEGAL SUFFICIENCY; REQUIRING THE ATTORNEY GENERAL TO PREPARE A STATEMENT IF A PROPOSED BALLOT ISSUE CONFLICTS WITH ANOTHER PROPOSED BALLOT ISSUE; REQUIRING THE SECRETARY OF STATE TO PREPARE THE PETITION FORM FOR BALLOT ISSUES; PROVIDING THAT SIGNATURE GATHERERS MUST BE MONTANA RESIDENTS AND MAY NOT BE PAID BASED UPON THE NUMBER OF SIGNATURES GATHERED; ELIMINATING THE CERTIFICATION OF SIGNATURES BY A PERSON WHO ASSISTED IN GATHERING THE SIGNATURES; REQUIRING THAT FACTUAL STATEMENTS CONTAINED IN BALLOT STATEMENTS MUST BE SUPPORTED BY DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR CONSISTENT USE OF DEFINED TERMS; PROVIDING A PENALTY; AMENDING SECTIONS 3-2-202, 3-5-302, 13-1-101, 13-22-102, 13-27-102, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-207, 13-27-208, 13-27-302, 13-27-312, 13-27-315, 13-27-316, 13-27-402, 13-27-403, 13-27-409, 13-27-501, 13-35-207, 13-37-210, 13-37-226, AND 13-37-228, MCA; REPEALING SECTIONS 13-27-310 AND 13-27-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . .	2128
482	( <i>Senate Bill No. 155; Williams</i> ) CREATING AN OLDER MONTANANS TRUST FUND AND PROVIDING FOR THE PURPOSES AND USE OF THE FUND; PROVIDING FOR A TRANSFER OF FUNDS FROM THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO THE OLDER MONTANANS TRUST FUND; AMENDING SECTIONS 17-7-302, 17-7-304, AND 53-6-1201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . .	2149

483 *(Senate Bill No. 547; Perry)* STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, 45-5-503, 45-5-507, 45-5-512, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-222, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2153

484 *(House Bill No. 160; Stoker)* TRANSFERRING AND APPROPRIATING MONEY FROM THE GENERAL FUND TO REPAY LAND TRUSTS AND TRUST BENEFICIARIES FOR DIVERSIONS FOR ADMINISTRATIVE COSTS; AND PROVIDING AN EFFECTIVE DATE . . . . . 2185

485 *(House Bill No. 337; Cohenour)* AUTHORIZING A COUNTY, A CONSOLIDATED GOVERNMENT, OR A MUNICIPALITY TO ESTABLISH A VOLUNTEER FIREFIGHTERS' DISABILITY INCOME INSURANCE ACCOUNT; AUTHORIZING A COUNTY, A CONSOLIDATED GOVERNMENT, OR A MUNICIPALITY TO LEVY A TAX, SUBJECT TO VOTER APPROVAL, ON PROPERTY TO PURCHASE DISABILITY INCOME INSURANCE COVERAGE FOR VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, AND 7-33-4111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2186

486 *(House Bill No. 368; Himmelberger)* PROVIDING APPROPRIATIONS TO THE LEGISLATIVE SERVICES DIVISION AND TO THE MONTANA HISTORICAL SOCIETY TO SUPPORT BROADCASTING SERVICES AND PERMANENT PRESERVATION OF TELEVISED LEGISLATIVE PROCEEDINGS . . . . . 2189

487 *(House Bill No. 462; Sands)* PROVIDING FOR THE ESTABLISHMENT OF CONSTITUENT SERVICES ACCOUNTS; PROVIDING FOR THE FUNDING AND USE OF MONEY IN A CONSTITUENT SERVICES ACCOUNT; PROVIDING REPORTING REQUIREMENTS FOR CONSTITUENT SERVICES ACCOUNTS; AMENDING SECTION 13-37-240, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2190

488 *(House Bill No. 491; Sinrud)* PERMITTING TESTIMONY OF CERTAIN CHILD WITNESSES BY TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CRIMINAL CASES INVOLVING SEXUAL OR VIOLENT OFFENSES; AND REPEALING SECTION 46-16-216, MCA . . . . . 2192

489 *(House Bill No. 829; Jones)* PROVIDING A MEANS TO RATIFY THE IMPENDING WATER RIGHTS COMPACT AMONG THE BLACKFEET TRIBE, THE STATE OF MONTANA, AND THE UNITED STATES; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE ACCOUNTS; PROVIDING A FUND TRANSFER; APPROPRIATING FUNDS FOR THE MITIGATION ACCOUNT; AND PROVIDING EFFECTIVE DATES . . . . . 2194

490	( <i>Senate Bill No. 22; Weinberg</i> ) REVISING THE ELIGIBILITY REQUIREMENTS FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1004, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . .	2196
491	( <i>House Bill No. 25; Olson</i> ) GENERALLY REVISING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE LAWS; ELIMINATING AND CLARIFYING CERTAIN DEFINITIONS; DEFINING CERTAIN TERMS; CLARIFYING CUSTOMER OPTIONS REGARDING PURCHASING ELECTRICITY SUPPLY; CLARIFYING PUBLIC UTILITY AND COOPERATIVE UTILITY EXEMPTIONS; CLARIFYING ELECTRICITY SUPPLY AND PROCUREMENT REQUIREMENTS; CLARIFYING THE APPROVAL PROCESS FOR ELECTRICITY SUPPLY RESOURCES; REQUIRING THE COMMISSION TO ADDRESS CARBON OFFSETS IN THE APPROVAL PROCESS; CLARIFYING USE OF GENERATION ASSETS; AMENDING SECTIONS 15-72-103, 15-72-104, 35-19-102, 69-1-114, 69-8-101, 69-8-103, 69-8-201, 69-8-210, 69-8-311, 69-8-402, 69-8-403, 69-8-411, 69-8-419, 69-8-420, 69-8-421, 69-8-602, 69-8-603, AND 69-8-1004, MCA; AND REPEALING SECTIONS 69-8-102, 69-8-104, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-404, 69-8-408, 69-8-409, AND 69-8-410, MCA. . . . .	2197
492	( <i>Senate Bill No. 4; Harrington</i> ) ESTABLISHING A PROCUREMENT REBATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR THE FUNDING AND USE OF MONEY IN THE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE . . . . .	2219
493	( <i>Senate Bill No. 12; Williams</i> ) REVISING THE COMMUNITY COLLEGE FUNDING STATUTES TO PROVIDE FOR CALCULATION OF THE STATE GENERAL FUND APPROPRIATION BASED ON VARIABLE AND FIXED COSTS; CLARIFYING THAT THE VARIABLE AND FIXED COSTS AND THE STATE SHARE ARE DETERMINED BY THE LEGISLATURE; PROVIDING DEFINITIONS; AMENDING SECTIONS 20-15-310 AND 20-15-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . .	2219
494	( <i>Senate Bill No. 25; Larson</i> ) CREATING THE CONTRACT HARVESTING PROGRAM; DEFINING TERMS FOR THE CONTRACT HARVESTING AND SALE OF FOREST PRODUCTS FROM STATE TRUST LANDS; AUTHORIZING CONTRACT HARVESTING OF TIMBER AND FOREST PRODUCTS ON STATE TRUST LANDS; AUTHORIZING THE SALE OF FOREST PRODUCTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; CREATING A CONTRACT HARVESTING SUBACCOUNT FOR THE DEPOSIT OF GROSS PROCEEDS FROM CONTRACT HARVESTING SALES AND THE PAYMENT OF CONTRACT HARVESTING COSTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD OF LAND COMMISSIONERS TO IMPLEMENT THE CONTRACT HARVESTING PROGRAM; AMENDING SECTIONS 77-1-613, 77-5-201, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . .	2221
495	( <i>Senate Bill No. 27; Esp</i> ) CLARIFYING THE RIGHT OF A GRANDPARENT TO HAVE CONTACT WITH A GRANDCHILD IN LIGHT OF DECISIONS BY THE U.S. SUPREME COURT AND THE MONTANA SUPREME COURT; AMENDING SECTION 40-9-102, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . .	2227
496	( <i>Senate Bill No. 31; Esp</i> ) ALLOWING CONTINUED CUSTODY OF A CHILD BY THE CHILD'S CARETAKER RELATIVE FOLLOWING VOLUNTARY SURRENDER OF THE CHILD BY A PARENT OF THE	



CHILD UNDER CIRCUMSTANCES INDICATING ABANDONMENT; PROVIDING FOR AN EX PARTE ORDER BY A DISTRICT COURT; PROHIBITING A PEACE OFFICER OR COURT FROM REQUIRING SURRENDER OF THE CHILD BY THE CARETAKER RELATIVE EXCEPT IN CERTAIN CIRCUMSTANCES; PROVIDING IMMUNITY; AND PROVIDING AN APPLICABILITY DATE . . . . . 2230

497 (*Senate Bill No. 74; Jent*) GENERALLY REVISING THE MONTANA TITLE LOAN ACT; INCLUDING TITLE LOAN LICENSEES IN THE DEFINITION OF REGULATED LENDERS; EXPANDING THE SCOPE OF THE ACT TO INCLUDE PAWNBROKERS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO CONDUCT INVESTIGATIONS AND TO ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; PROVIDING FOR RESTITUTION; AND AMENDING SECTIONS 31-1-111, 31-1-802, 31-1-803, 31-1-811, 31-1-816, 31-1-817, AND 31-1-825, MCA . . . . . 2233

498 (*Senate Bill No. 92; Steinbeisser*) GENERALLY REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; ELIMINATING EXCEPTIONS TO THE EXPERIENCE AND EXAMINATION REQUIREMENTS FOR LICENSING; PROVIDING THAT AN INDIVIDUALLY LICENSED MORTGAGE BROKER MAY ONLY WORK FOR ONE EMPLOYING ENTITY; PROVIDING GUIDELINES IN CASES OF TERMINATION OF EMPLOYMENT OF INDIVIDUALLY LICENSED MORTGAGE BROKERS; REVISING RECORDKEEPING REQUIREMENTS; CLARIFYING WHO PAYS CERTAIN FEES; PROVIDING FOR INVESTIGATIONS BY THE DEPARTMENT OF ADMINISTRATION; ESTABLISHING REQUIREMENTS FOR CEASE AND DESIST ORDERS; REVISING LICENSE REVOCATION AND SUSPENSION PROVISIONS AND PENALTY PROVISIONS; AMENDING SECTIONS 32-9-103, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, AND 32-9-133, MCA; AND REPEALING SECTIONS 32-9-111 AND 32-9-131, MCA . . . . . 2240

499 (*Senate Bill No. 103; Lind*) GENERALLY REVISING LOCAL GOVERNMENT FIRE PROTECTION LAWS; CHANGING THOSE WHO MAY PETITION FOR CREATION, ANNEXATION, DIVISION, AND DISSOLUTION OF RURAL FIRE DISTRICT FROM FREEHOLDERS TO OWNERS OF 40 PERCENT OR MORE OF THE REAL PROPERTY WITHIN THE PROPOSED DISTRICT AND OWNERS OF PROPERTY REPRESENTING 40 PERCENT OR MORE OF THE TAXABLE VALUE OF THE PROPERTY WITHIN THE PROPOSED DISTRICT AND CHANGING THE PERCENTAGE OF PETITIONERS REQUIRED; ALLOWING CERTAIN CITIES AND TOWNS TO BE INCLUDED IN A RURAL FIRE DISTRICT; PROHIBITING SIGNATURES FROM BEING WITHDRAWN FROM A PETITION AFTER A CERTAIN TIME PERIOD; REVISING THE POWERS AND DUTIES OF RURAL FIRE DISTRICT TRUSTEES; REMOVING LIMITATIONS ON TRUSTEES' ABILITY TO ENTER INTO CONTRACTS FOR FIRE PROTECTION SERVICES; PROVIDING THAT TWO OR MORE RURAL FIRE DISTRICTS THAT CONSOLIDATE RESULT IN A NEW RURAL FIRE DISTRICT FOR MILL LEVY PURPOSES; REVISING HOW A RURAL FIRE DISTRICT MAY BE DIVIDED AND THE REQUIREMENTS FOR DIVISION; ALLOWING TERRITORY WITHIN CERTAIN CITIES AND TOWNS TO BE ANNEXED INTO A RURAL FIRE DISTRICT; REQUIRING A COUNTY GOVERNING BODY TO EITHER PROVIDE DIRECT FIRE PROTECTION TO COUNTY LAND OR TO ENTER INTO AN AGREEMENT FOR THAT PROTECTION; REMOVING THE

PROHIBITION ON MORE THAN ONE FIRE COMPANY FOR CERTAIN LOCATIONS; REMOVING THE PROVISION THAT RURAL FIRE DISTRICT CHIEFS SERVE WITHOUT COMPENSATION; REMOVING THE PROVISION ALLOWING VOLUNTARY URBAN FIRE CREWS FOR USE IN RURAL AREAS; AMENDING SECTIONS 7-33-2101, 7-33-2102, 7-33-2103, 7-33-2104, 7-33-2105, 7-33-2106, 7-33-2107, 7-33-2109, 7-33-2120, 7-33-2121, 7-33-2123, 7-33-2124, 7-33-2125, 7-33-2126, 7-33-2127, 7-33-2128, 7-33-2202, 7-33-2205, 7-33-2206, 7-33-2210, 7-33-2311, 7-33-2313, AND 7-33-2401, MCA; AND REPEALING SECTIONS 7-33-2122, 7-33-2204, AND 7-33-2207, MCA . . . . . 2250

500 (*Senate Bill No. 115; Jent*) DIRECTING THAT ALL MONEY COLLECTED BY COURTS AS RESTITUTION FOR THE ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE BE CREDITED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR HUNTER EDUCATION AND ENFORCEMENT; AMENDING SECTION 87-1-114, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 2262

501 (*Senate Bill No. 127; Wanzenried*) TO REVISE LAWS RELATING TO THE SALE AND DISTRIBUTION OF WINE BY WINERIES; ALLOWING ALL LICENSED WINERIES TO MAKE LIMITED SALES TO LICENSED WINE RETAILERS; AMENDING SECTIONS 16-3-219, 16-3-301, 16-3-401, 16-3-402, 16-3-404, 16-3-411, 16-3-418, 16-4-107, 16-4-501, 16-4-906, 16-6-104, AND 16-6-314, MCA . . . . . 2263

502 (*Senate Bill No. 153; Cocchiarella*) REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSEE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302,

37-16-405, 37-18-306, 37-26-201, 37-26-403, 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA . . . . . 2270

503 (*Senate Bill No. 168; Jent*) REVISING THE MANDATORY CASH PAYMENT FOR VACATION LEAVE UPON TERMINATION; CLARIFYING THE USE OF VACATION LEAVE PAYMENTS UPON TERMINATION AS PERMISSIBLE CONTRIBUTIONS FOR A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AMENDING SECTIONS 2-18-601, 2-18-617, AND 2-18-1311, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 2300

504 (*Senate Bill No. 206; Cobb*)REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONDUCT A STUDY TO DETERMINE THE FEASIBILITY, IMPACT, AND COST OF PROVIDING EMPLOYER-SPONSORED HEALTH INSURANCE TO PERSONAL-CARE ATTENDANTS AND DIRECT-CARE EMPLOYEES OF ORGANIZATIONS THAT RECEIVE THE MAJORITY OF THEIR REVENUE AS A RESULT OF PROVIDING MEDICAID-FUNDED LONG-TERM CARE SERVICES BY INCREASING CERTAIN MEDICAID PAYMENTS TO THEIR EMPLOYERS AND REQUIRING THE INCREASED PAYMENTS BE USED TO FUND THE HEALTH INSURANCE; AUTHORIZING THE DEPARTMENT TO ESTABLISH A PILOT PROGRAM; REQUIRING A REPORT TO THE LEGISLATURE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . . 2304

505 (*Senate Bill No. 233; Elliott*) PROVIDING FOR THE CREATION OF COUNTY MUSEUM DISTRICTS AND ALLOWING FOR A MUSEUM DISTRICT TO BE LOCATED IN MORE THAN ONE COUNTY; PROVIDING FOR PROTEST OF CREATION OF THE DISTRICT; ALLOWING FOR A LEVY OF TAXES ON PROPERTY LOCATED WITHIN A DISTRICT; REQUIRING CERTAIN PROCEDURES IF THE DISTRICT INCLUDES TERRITORY FROM MORE THAN ONE COUNTY; AND AMENDING SECTIONS 7-6-2527 AND 7-16-2205, MCA . . . . . 2306

506 (*Senate Bill No. 273; Jent*) GENERALLY REVISING ADMINISTRATION OF STANDARDS AND TRAINING CRITERIA FOR PUBLIC SAFETY PROFESSIONALS; ESTABLISHING A MONTANA PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL AS A QUASI-JUDICIAL BOARD IN PLACE OF THE PEACE OFFICERS' STANDARDS AND TRAINING ADVISORY COUNCIL UNDER THE BOARD OF CRIME CONTROL; PROVIDING THAT THE NEW COUNCIL BE ALLOCATED TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; AUTHORIZING RULEMAKING; SPECIFYING MEMBERSHIP; PROVIDING DEFINITIONS AND DUTIES; SPECIFYING RESPONSIBILITY FOR APPLYING THE STANDARDS AND TRAINING REQUIREMENTS; PROVIDING INSTRUCTIONS FOR THE TRANSITION; TRANSFERRING RESPONSIBILITY FOR CONDUCTING TRAINING FOR JUVENILE PROBATION OFFICERS TO THE OFFICE OF COURT ADMINISTRATOR; AMENDING SECTIONS 7-4-2905, 7-31-201, 7-31-202, 7-31-203, 7-32-201, 7-32-214, 7-32-303, 7-32-4112, 19-7-101, 41-5-1706, 44-4-301, 44-4-305, 44-4-902, AND 46-23-1003, MCA; REPEALING SECTION 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 2310

- 507 *(Senate Bill No. 276; Steinbeisser)* ALLOWING FUNERAL DIRECTORS, UNDERTAKERS, AND MORTICIANS TO SELL CERTAIN TYPES OF FUNERAL INSURANCE SUBJECT TO CERTAIN CONDITIONS IF LICENSED; DEFINING "FUNERAL INSURANCE"; AMENDING SECTIONS 33-17-211, 33-17-214, AND 33-18-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 2321
- 508 *(Senate Bill No. 279; Balyeat)* ESTABLISHING THE CLEAN CAMPAIGN ACT; REQUIRING CANDIDATES AND COMMITTEES SUPPORTING CANDIDATES TO PROVIDE CANDIDATES IN PRIMARY AND GENERAL ELECTIONS WITH COPIES OF CERTAIN CAMPAIGN ADVERTISING INTENDED TO BE DISTRIBUTED IN THE 10 DAYS PRIOR TO AN ELECTION; PROVIDING CIVIL PENALTIES FOR VIOLATIONS; AND AMENDING SECTION 13-37-128, MCA . . . . . 2326
- 509 *(Senate Bill No. 281; Balyeat)* ALLOWING MARRIED TAXPAYERS WHO FILE SEPARATE MONTANA INCOME TAX RETURNS TO USE FEDERAL DETERMINATIONS OF ADJUSTED GROSS INCOME REPORTED ON FEDERAL JOINT RETURNS IN DETERMINING MONTANA ADJUSTED GROSS INCOME FOR CERTAIN INCOME ITEMS; AMENDING SECTIONS 15-30-111, 15-62-207, AND 15-62-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2327
- 510 *(Senate Bill No. 316; Elliott)* ALLOWING A PARCEL OF LAND LESS THAN 20 ACRES TO QUALIFY AS AGRICULTURAL LAND IF THE PARCEL HAD PREVIOUSLY TOTALED 20 ACRES OR MORE AND WAS QUALIFIED AS AGRICULTURAL LAND BUT THE SIZE OF THE PARCEL WAS REDUCED TO LESS THAN 20 ACRES FOR A PUBLIC USE BY THE FEDERAL GOVERNMENT, THE STATE, OR A LOCAL GOVERNMENT AND THE PARCEL HAS NOT BEEN FURTHER SPLIT; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2333
- 511 *(Senate Bill No. 348; Gallus)* ELIMINATING THE REQUIREMENT FOR THE APPOINTMENT OF AN ATTORNEY FOR A GUARDIAN AD LITEM IN A CHILD ABUSE AND NEGLECT CASE; ALLOWING AN APPOINTMENT FOR A GUARDIAN AD LITEM OR COURT-APPOINTED SPECIAL ADVOCATE WHEN APPROPRIATE; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2336
- 512 *(Senate Bill No. 363; Kaufmann)* PROVIDING THAT PRIVATE PROPERTY MAY BE CONDEMNED THROUGH THE USE OF EMINENT DOMAIN FOR URBAN RENEWAL PROJECTS ONLY IF THE PROPERTY IS DETERMINED TO BE BLIGHTED AND MAY NOT BE ACQUIRED BY EMINENT DOMAIN IF THE PURPOSE OF THE PROJECT IS TO INCREASE TAX REVENUE; PROVIDING THAT THE CONDEMNED PROPERTY MUST BE APPLIED TO A DEMONSTRATED PUBLIC USE; PROVIDING PROCEDURES IF THE PROPERTY IS SOLD; AND AMENDING SECTIONS 7-15-4259, 70-30-102, 70-30-111, AND 70-30-322, MCA . . . . . 2336
- 513 *(Senate Bill No. 365; Story)* REVISING LAWS RELATED TO WATER COMMISSIONERS; PROVIDING THAT AT THE DISTRICT COURT'S DISCRETION A BILL MAY BE ISSUED PRIOR TO THE BEGINNING OF A DISTRIBUTION SEASON FOR THE PURPOSE OF OFFSETTING COSTS ASSOCIATED WITH DISTRIBUTING WATER; PROVIDING THAT A BILLING BEFORE A DISTRIBUTION SEASON MAY NOT EXCEED 80 PERCENT OF THE AMOUNT THAT WAS PAID BY A WATER USER DURING THE PRIOR DISTRIBUTION SEASON;

AMENDING SECTIONS 85-5-107, 85-5-201, 85-5-204, AND 85-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2340

514 (*Senate Bill No. 382; Laslovich*) AUTHORIZING THE CREATION OF MENTAL HEALTH TREATMENT COURTS FOR OFFENDERS WITH A MENTAL DISORDER; PROVIDING FOR IMPLEMENTATION OF ACCOUNTABILITY AND TREATMENT PROGRAMS; CREATING PROCEDURAL GUIDELINES FOR DISTRICT COURT JUDGES; AMENDING SECTION 3-10-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2343

515 (*Senate Bill No. 433; Laslovich*) ALLOWING A JUDGE TO TERMINATE A DEFERRED OR SUSPENDED SENTENCE UNDER CERTAIN CONDITIONS; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2348

516 (*Senate Bill No. 524; Wanzenried*) REVISING LAWS RELATING TO THE SALE AND DISTRIBUTION OF BEER BY BREWERIES AND WINE BY WINERIES; ALLOWING ALL LICENSED BREWERIES TO MAKE LIMITED SALES TO LICENSED BEER RETAILERS; AND AMENDING SECTIONS 16-3-211, 16-3-214, 16-3-301, 16-4-906, 16-6-104, AND 16-6-314, MCA . . . . . 2349

517 (*Senate Bill No. 118; Cobb*) ELIMINATING THE JUNE 30, 2007, TERMINATION DATE FOR THE HOSPITAL FACILITY UTILIZATION FEE; SETTING NEW FEE PROVISIONS; UPDATING A DEFINITIONAL CITE; AMENDING SECTIONS 15-66-101, 15-66-102, AND 15-66-201, MCA, AND SECTION 20, CHAPTER 390, LAWS OF 2003, AND SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . . 2352

518 (*Senate Bill No. 161; Laible*) GENERALLY REVISING CAPTIVE INSURANCE LAWS; ESTABLISHING A CAPTIVE INSURANCE REGULATORY AND SUPERVISION ACCOUNT; REVISING DEFINITIONS; EXPANDING THE DEFINITION OF “PURE CAPTIVE INSURANCE COMPANY” TO INCLUDE CONTROLLED UNAFFILIATED BUSINESS ENTITIES; PROVIDING FOR INVESTMENTS BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; REVISING LICENSING AND MINIMUM CAPITAL SURPLUS REQUIREMENTS; REVISING PROCEDURES FOR FORMING CAPTIVE INSURANCE COMPANIES; REVISING FILING AND EXAMINATION REQUIREMENTS FOR CAPTIVE RISK RETENTION GROUPS; CLARIFYING TAX COMPUTATION FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; SUBSTITUTING THE TERM “PROTECTED CELL CAPTIVE INSURANCE COMPANY” FOR “SPONSORED CAPTIVE INSURANCE COMPANY”; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-106, 33-28-107, 33-28-108, 33-28-201, 33-28-202, 33-28-205, 33-28-206, 33-28-207, 33-28-301, 33-28-302, 33-28-303, 33-28-304, AND 33-28-306, MCA . . . . . 2354

519 (*Senate Bill No. 205; Jent*) TO EXEMPT AUTHORIZED GAME WARDEN POSITIONS FROM THE IMPOSITION OF VACANCY SAVINGS WHEN ESTABLISHING THE BUDGET FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND PROVIDING AN EFFECTIVE DATE. . . . . 2371

520 (*Senate Bill No. 222; Esp*) REQUIRING A REDUCTION IN SPEED OF AT LEAST 20 MILES PER HOUR BELOW THE POSTED SPEED LIMIT IN CERTAIN SITUATIONS WHEN APPROACHING AN EMERGENCY OR POLICE VEHICLE ON A PUBLIC HIGHWAY WITH A POSTED SPEED LIMIT OF 50 MILES PER HOUR OR GREATER; AND AMENDING SECTIONS 61-8-346 AND 61-9-402, MCA . . . . . 2372

521 *(Senate Bill No. 550; Laible)* REVISING THE LAWS GOVERNING LOCAL GOVERNMENT STUDY COMMISSIONS; AUTHORIZING THE IMPOSITION OF A MILL LEVY AND PROVIDING FOR AN EXCEPTION FROM THE MILL LEVY LIMITS FOR A LEVY FOR FUNDING LOCAL GOVERNMENT STUDY COMMISSIONS; CLARIFYING THE PROCEDURES FOR PROPOSALS FOR ALTERNATIVE FORMS OR PLANS OF GOVERNMENT MADE BY PETITION OR BY A STUDY COMMISSION; PROVIDING THAT ELECTED OFFICIALS REMAIN IN OFFICE UNLESS THE NEW FORM OR PLAN ELIMINATES THE OFFICE FOR WHICH THEY WERE ELECTED; AND AMENDING SECTIONS 7-3-122, 7-3-141, 7-3-142, 7-3-149, 7-3-151, 7-3-152, 7-3-153, 7-3-155, 7-3-156, 7-3-157, 7-3-158, 7-3-160, 7-3-161, 7-3-175, 7-3-178, 7-3-184, 7-3-187, 7-3-192, 7-3-193, AND 15-10-420, MCA . . . . . 2374

**HOUSE JOINT RESOLUTIONS**

<u>HJR</u>		<u>Page</u>
1	<i>(Keane)</i> URGING CONGRESS TO DEVELOP HEALTH CARE REFORMS ADDRESSING THE INCREASING COSTS OF HEALTH CARE, THE INCREASING NUMBER OF PEOPLE WITHOUT HEALTH INSURANCE, A LACK OF UNIFORM QUALITY, AND DISPARATE HEALTH CARE LEGISLATION AMONG STATES THAT IMPACTS THE NATION'S ECONOMY AND AMERICANS' HEALTH. . . . .	2387
3	<i>(Musgrove)</i> URGING 24-HOUR SERVICE AT THE PORT OF ENTRY-WILD HORSE. . . . .	2388
4	<i>(Cohenour)</i> OPPOSING THE RELAXATION OF MAIL DELIVERY STANDARDS UNDER CONSIDERATION BY THE PRESIDENT'S COMMISSION ON THE UNITED STATES POSTAL SERVICE; REQUESTING THAT THE UNITED STATES POSTAL SERVICE MAINTAIN CURRENT LEVELS OF SERVICE; AND REQUESTING THAT THE UNITED STATES POSTAL SERVICE MAINTAIN CURRENT OVERNIGHT DELIVERY STANDARDS AND NOT CENTRALIZE MONTANA'S MAIL-SORTING OPERATIONS. . . . .	2389
5	<i>(Lange)</i> URGING MONTANA'S CONGRESSIONAL DELEGATION TO INTRODUCE AND SUPPORT LEGISLATION REQUIRING THE U.S. ARMY CORPS OF ENGINEERS TO INCREASE AND MAINTAIN A MINIMUM POOL ELEVATION IN FORT PECK RESERVOIR OF 2226 FEET ABOVE MEAN SEA LEVEL AND TO PROTECT MONTANA'S WATER RIGHTS. . . . .	2391
6	<i>(Phillips)</i> SUPPORTING THE "25 X 25" INITIATIVE TO INCREASE PRODUCTION OF RENEWABLE ENERGY BY THE AGRICULTURAL COMMUNITY . . . . .	2392
7	<i>(Ward)</i> URGING THE EXECUTIVE AND JUDICIAL BRANCHES OF STATE GOVERNMENT TO IMPLEMENT TELECOMMUTING, ALSO KNOWN AS "TELEWORK", WITHIN BRANCH AGENCIES BY IDENTIFYING FUNCTIONS THAT MAY BE PERFORMED BY EMPLOYEES WHO TELEWORK, ADOPTING POLICIES AND PROCEDURES FOR TELEWORK, AND IMPLEMENTING THOSE POLICIES . . . . .	2393
14	<i>(Heinert)</i> URGING CONGRESS TO INCLUDE A RIGHT OF FIRST REFUSAL FOR A STATE IN WHICH FEDERAL LAND PROPOSED FOR SALE IS LOCATED . . . . .	2394

16 (*Ripley*) URGING THAT THE REVISION OF THE CRIMINAL CODES WITHIN TITLE 87 OF THE MONTANA CODE ANNOTATED BE GIVEN PRIORITY . . . . . 2395

17 (*Cohenour*) URGING THE UNITED STATES GOVERNMENT TO ALLOW THE INTERSTATE SHIPMENT OF MEAT THAT IS PROCESSED IN APPROVED STATE-INSPECTED MEAT PROCESSING AND PACKING FACILITIES, AS ALLOWED BY UNITED STATES DEPARTMENT OF AGRICULTURE REGULATIONS. . . . . 2396

19 (*Morgan*) URGING MEDICAL AND MENTAL HEALTH CARE PROVIDERS TO ASSIST PERSONS WITH A CHRONIC ILLNESS AND THEIR FAMILIES TO FACILITATE METHODS OF ACCESS TO HEALTH CARE INFORMATION OR TO BRING A STATE LAW THAT PREVENTS ACCESS TO THE ATTENTION OF THE LEGISLATURE, THE GOVERNOR, OR THE ATTORNEY GENERAL . . . . . 2397

20 (*Milburn*) URGING THE U.S. DEPARTMENT OF DEFENSE TO REQUIRE MALMSTROM AIR FORCE BASE TO TAKE FINANCIAL RESPONSIBILITY FOR REMEDIATION OF SEDIMENT IN THE MISSOURI RIVER RESULTING FROM STORM WATER . . . . . 2398

22 (*Jones*) REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY REPAYMENT PROGRAMS AND OTHER INCENTIVE PROGRAMS TO SUPPORT ACCESS TO DENTAL CARE IN THE STATE, WITH EMPHASIS ON RURAL AREAS. . . . . 2399

24 (*Hands*) URGING CONGRESS TO BAN THE SALE, DISTRIBUTION, TRANSFER, OR EXPORT OF ELEMENTAL MERCURY. . . . . 2400

25 (*Rice*) OPPOSING ANY EFFORT TO IMPLEMENT A TRINATIONAL POLITICAL, GOVERNMENTAL ENTITY AMONG THE UNITED STATES, CANADA, AND MEXICO; OPPOSING THE SECURITY AND PROSPERITY PARTNERSHIP OF NORTH AMERICA AND INITIATIVES PURSUED IN CONJUNCTION WITH THE PARTNERSHIP THAT THREATEN THE SOVEREIGNTY OF THE UNITED STATES; OPPOSING A NORTH AMERICAN UNION; AND OPPOSING THE NORTH AMERICAN FREE TRADE AGREEMENT SUPERHIGHWAY SYSTEM . . . . . 2401

26 (*Callahan*) REQUESTING THAT AN INTERIM COMMITTEE OR STAFF STUDY AND DEVELOP AN IMPLEMENTATION PLAN FOR MENTAL HEALTH CARE FOR ADULTS AND YOUTH IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS . . . . . 2403

28 (*Cohenour*) REQUESTING AN INTERIM STUDY OF BUSINESSES INFRASTRUCTURE IN MONTANA AS IT RELATES TO ECONOMIC DEVELOPMENT INITIATIVES . . . . . 2404

31 (*Everett*) OPPOSING THE ROCKIES PROSPERITY ACT. . . . . 2405

33 (*Thomas*) REQUESTING AN INTERIM STUDY OF ISSUES RELATED TO POLIO AND POSTPOLIO SEQUELAE IN MONTANA, THEIR IMPACTS IN MONTANA, AND WAYS TO ADDRESS POLIO-RELATED ISSUES TO IMPROVE THE LONG-TERM HEALTH OF MONTANANS . . . . . 2407

34 (*Van Dyk*) URGING MONTANA'S CONGRESSIONAL DELEGATION AND THE UNITED STATES BUREAU OF RECLAMATION TO ACT IN SUPPORT OF PROTECTING FLOWS IN THE MONTANA STRETCH OF THE BIGHORN RIVER . . . . . 2408

35 (*Ebinger*) RESOLVING THAT THE LEGISLATIVE AUDIT COMMITTEE PRIORITIZE A PERFORMANCE AUDIT OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS' WEED MANAGEMENT PROGRAM AND THAT THE LEGISLATIVE AUDITOR PRESENT FINDINGS FROM

	THE PERFORMANCE AUDIT, WITH RECOMMENDATIONS FOR PROPOSED LEGISLATION, TO THE 61ST LEGISLATURE. . . . .	2409
36	<i>(Lambert)</i> URGING CONGRESS TO DE-COUPLE FEDERAL MINERAL ROYALTY REVENUE PAYMENTS FROM STATES TO COUNTIES WHEN CALCULATING PAYMENT IN LIEU OF TAX PAYMENTS. . . . .	2410
38	<i>(Jore)</i> STATING FINDINGS OF THE LEGISLATURE; REPEALING, RESCINDING, CANCELING, VOIDING, AND SUPERSEDING ANY AND ALL EXTANT APPLICATIONS BY THE LEGISLATURE OF THE STATE OF MONTANA PREVIOUSLY MADE DURING ANY LEGISLATIVE SESSION TO THE CONGRESS OF THE UNITED STATES OF AMERICA TO CALL A CONVENTION PURSUANT TO THE TERMS OF ARTICLE V OF THE UNITED STATES CONSTITUTION FOR PROPOSING ONE OR MORE AMENDMENTS TO THE CONSTITUTION; URGING THE LEGISLATURES OF THE OTHER STATES TO DO THE SAME; AND DIRECTING COPIES OF THIS RESOLUTION BE SENT TO SPECIFIED PERSONS. . . . .	2411
39	<i>(Erickson)</i> REQUESTING AN INTERIM STUDY ON THE ECONOMIC BENEFITS OF PURSUING COMMERCIALIZATION PROJECTS WITH EXISTING RESEARCH UNITS WITHIN THE MONTANA UNIVERSITY SYSTEM . . . . .	2412
40	<i>(Windy Boy)</i> URGING CONGRESS TO APPROVE INCREASED FUNDING FOR REGIONAL WATER PROJECTS IN MONTANA . . . . .	2413
41	<i>(Furey)</i> RECOGNIZING THE SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES. . . . .	2414
42	<i>(Wilmer)</i> DESIGNATING APRIL 28 THROUGH MAY 5, 2007, AS SAFE KIDS WEEK IN MONTANA. . . . .	2415
44	<i>(Gallik)</i> RECOGNIZING THE IMPORTANCE OF THE MONTANA CHILDREN'S HEALTH INSURANCE PROGRAM; AND URGING THE TIMELY CONGRESSIONAL REAUTHORIZATION OF FEDERAL FUNDS FOR THE PROGRAM . . . . .	2416
45	<i>(Thomas)</i> REQUESTING AN INTERIM STUDY TO IDENTIFY INADEQUACIES IN AND PROPOSE OPTIONS TO IMPROVE STATE SYSTEMS THAT DO NOT ALLOW FOR THE ACCURATE AND CONSISTENT SPELLING AND USE OF EVERY CITIZEN'S FULL LEGAL NAME; REQUESTING THAT THE STUDY ENGAGE THE EXPERTISE AVAILABLE WITHIN THE DEPARTMENT OF ADMINISTRATION; AND REQUIRING A REPORT OF THE STUDY'S FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS . . . . .	2417
46	<i>(Sands)</i> REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE OR SUFFICIENT STAFF RESOURCES BE ASSIGNED TO DEVELOP LEGISLATION THAT PROVIDES FOR A COMPREHENSIVE CLEANUP AND CLARIFICATION OF CURRENT ELECTION LAWS, INCLUDING THE POSSIBLE REVISIONS TO MAIL BALLOT ELECTION LAWS TO REQUIRE OR PERMIT THAT ALL ELECTIONS BE CONDUCTED BY MAIL BALLOT; AND PROVIDING THAT THE DRAFT LEGISLATION BE PRESENTED TO THE 61ST LEGISLATURE FOR CONSIDERATION. . . . .	2418
47	<i>(French)</i> REQUESTING THAT AN INTERIM COMMITTEE STUDY THE FUNDING, EXPENDITURES, AND EFFECTIVENESS OF MONTANA'S STATEWIDE GENETICS PROGRAM . . . . .	2420
48	<i>(MacLaren)</i> REQUESTING THAT AN INTERIM COMMITTEE STUDY HEALTH INSURANCE REFORM AND PUBLICLY FUNDED HEALTH CARE PROGRAMS. . . . .	2421



TITLE CONTENTS

50 (*Becker*) REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY MONTANA'S PSYCHIATRIC PRECOMMITMENT EXAMINATION, DETENTION, AND TREATMENT PROCESS AND COSTS . . . . . 2423

52 (*Dickenson*) REQUESTING AN INTERIM STUDY OF THE ECONOMIC AND SOCIETAL COSTS OF GAMBLING WITH THE PURPOSE OF INCREASING AWARENESS ABOUT THE INDUSTRY AND ITS EFFECTS ON THE LIVES OF MONTANA CITIZENS AND THEIR COMMUNITIES . . . . . 2424

57 (*Jopek*) PROVIDING FOR AN INTERIM STUDY OF CONSERVATION EASEMENTS ON STATE TRUST LANDS . . . . . 2426

59 (*Himmelberger*) REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY PUBLIC EMPLOYEE RETIREMENT SYSTEMS AND PRODUCE A LEGISLATOR'S GUIDE ON MONTANA'S PUBLIC EMPLOYEE RETIREMENT PLANS THAT INCLUDES COMPARISONS OF PLAN DESIGN AND FUNDING OPTIONS AND OFFERS FINDINGS AND RECOMMENDATIONS . . . . . 2427

61 (*Cohenour*) REQUESTING AN INTERIM STUDY TO ASSESS THE CONFORMITY OF MONTANA'S INCOME TAX LAWS WITH FEDERAL INCOME TAX LAWS AND TO CONSIDER REORGANIZING CERTAIN PROVISIONS OF MONTANA'S INCOME TAX LAWS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE . . . . . 2429

**HOUSE RESOLUTIONS**

HR . . . . . Page

1 (*Lange*) REVISING AND ADOPTING THE HOUSE RULES . . . . . 2431

3 (*Lange*) ENCOURAGING FULL FEDERAL FUNDING IN THE CONSTRUCTION AND MAINTENANCE OF FEDERAL HIGHWAYS . . . . . 2456

**SENATE JOINT RESOLUTIONS**

SJR . . . . . Page

1 (*Williams*) REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES . . . . . 2457

2 (*Smith*) REQUESTING AN INTERIM LEGISLATIVE STUDY OF DRIVING UNDER THE INFLUENCE IN MONTANA . . . . . 2473

3 (*Weinberg*) RECOGNIZING THE SIZEABLE CULTURAL, NATURAL, AND ECONOMIC CONTRIBUTIONS THAT NATIONAL PARKS, BATTLEFIELDS, AND MONUMENTS MAKE TO THE STATE AND RECOGNIZING THAT DOCUMENTED AND SUBSTANTIAL MAINTENANCE BACKLOGS AND ANNUAL OPERATIONS BUDGET SHORTFALLS AT NATIONAL PARKS, BATTLEFIELDS, AND MONUMENTS PUT THE PARKS AND BUSINESSES THAT DEPEND ON HEALTHY PARKS AT RISK; AND URGING MONTANA'S CONGRESSIONAL DELEGATION TO INITIATE APPROPRIATIONS ACTIONS TO RESTORE NATIONAL PARKS, BATTLEFIELDS, AND MONUMENTS TO THEIR FORMER STATURE BY THE CENTENNIAL OF THE NATIONAL PARK SYSTEM IN 2016. . . . . 2473

4 (*Curtiss*) URGING THE U.S. CONGRESS TO REAUTHORIZE THE SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT AND WORK TOWARD A PERMANENT SOLUTION TO COMPENSATE STATES AND LOCAL GOVERNMENTS FOR LOST TAX REVENUE ON FEDERAL LAND WITHIN MONTANA 2475

5 (*Brueggeman*) REQUESTING AN INTERIM STUDY TO IDENTIFY THE ISSUES AND CHALLENGES INVOLVED IN PROVIDING EMERGENCY CARE AND TO REPORT ON STRATEGIES THAT CAN STRENGTHEN MONTANA'S EMERGENCY MEDICAL SERVICES SYSTEM . . . . . 2476

6 (*Schmidt*) REQUESTING A STUDY OF THE JUVENILE JUSTICE SYSTEM IN ORDER TO IDENTIFY ANY GAPS IN THE LAW OR RESOURCES OR BETWEEN THE EXISTING AGENCIES WITH VARIOUS RESPONSIBILITIES WITHIN THE SYSTEM. . . . . 2477

7 (*Lind*) REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF JUSTICE TO EXAMINE REQUIRING CRIMINAL BACKGROUND CHECKS FOR DIRECT-CARE WORKERS AND TO PROVIDE A PROPOSAL TO THE 61ST LEGISLATURE . . . . . 2479

12 (*Brueggeman*) ENCOURAGING INTERNATIONAL EDUCATION IN THE ADVANCEMENT OF THE GLOBAL SOCIETY . . . . . 2480

13 (*Smith*) REQUESTING AN INTERIM STUDY TO EVALUATE METHODS AND RECOMMEND WAYS TO ADD VALUE TO MONTANA AGRICULTURAL PRODUCTS THROUGH REDEVELOPMENT OF A FOOD PROCESSING INDUSTRY; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE . . . . . 2481

15 (*Gillan*) REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY THE IMPACT OF MONTANA'S HEALTH CARE DELIVERY SYSTEM, INCLUDING PHYSICIAN-OWNED HEALTH CARE FACILITIES AND SPECIALTY HOSPITALS, ON HEALTH CARE SERVICES IN MONTANA . . . . . 2483

16 (*Lind*) URGING THE OFFICE OF PUBLIC INSTRUCTION TO CIRCULATE SPECIFIED MATERIAL TO ALL PUBLIC AND PRIVATE SCHOOLS IN MONTANA AND TO ENCOURAGE THOSE SCHOOLS TO DELIVER THE "BE SAFE" FIREARMS SAFETY PROGRAM TO ALL STUDENTS IN GRADES 1 THROUGH 3 EACH SCHOOL YEAR . . . . 2484

18 (*Pease*) URGING CONGRESS TO ALLOCATE A PORTION OF FEDERAL EXCISE TAXES FOR TRIBAL WILDLIFE AND FISH MANAGEMENT PROGRAMS . . . . . 2485

19 (*Gillan*) SUPPORTING THE DEVELOPMENT OF SECURE AND CONFIDENTIAL HEALTH INFORMATION TECHNOLOGY AND EXCHANGE IN LOCAL COMMUNITIES . . . . . 2486

21 (*Peterson*) REQUESTING THAT THE LEWISTOWN, MONTANA, NATIONAL GUARD ARMORY BE NAMED IN HONOR OF MASTER SERGEANT ROBBIE D. MCNARY . . . . . 2487

22 (*Cocchiarella*) REQUESTING CONGRESS TO ADOPT LEGISLATION TO MODIFY THE LIMITS ON THE LENGTH AND WEIGHT OF LONG-HAUL TRUCKS . . . . . 2488

23 (*Harrington*) STRONGLY URGING THAT TAIWAN BE PERMITTED APPROPRIATE AND MEANINGFUL PARTICIPATION IN ACTIVITIES OF THE WORLD HEALTH ORGANIZATION . . . . . 2489

24 *(Laslovich)* REQUESTING AN INTERIM STUDY TO ASSESS PRISON POPULATION GROWTH AND NONPRISON TREATMENT ALTERNATIVES FOR CERTAIN NONVIOLENT OFFENDERS . . . . . 2489

25 *(Peterson)* EXPRESSING GRATITUDE FOR THE MILITARY PERSONNEL KILLED IN IRAQ AND AFGHANISTAN AND EXPRESSING SYMPATHY FOR THE FAMILIES OF THOSE MILITARY PERSONNEL; AND REQUESTING THE DEPARTMENT OF MILITARY AFFAIRS TO CONSIDER, AND MAKE RECOMMENDATIONS TO THE LEGISLATURE ABOUT, CREATING AN APPROPRIATE MEDAL HONORING MONTANA MILITARY PERSONNEL KILLED IN ACTION 2491

31 *(Essmann)* REQUESTING AN INTERIM STUDY TO EXAMINE THE FUTURE VIABILITY OF THE USE OF PROPERTY TAXES TO FUND EDUCATION, EXAMINE EQUALIZATION THROUGH A STATEWIDE EQUALIZATION DISTRICT THAT COULD LEVY AGAINST SPECIFIC CLASSES OF PROPERTY, AND INQUIRE INTO THE USE OF A STATEWIDE SALES TAX AND USE TAX TO PROVIDE EDUCATION FUNDING THAT WOULD INCLUDE PROPERTY TAX RELIEF IN A PERMANENT MANNER; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE . . . . . 2491

**SENATE RESOLUTIONS**

SR Page

1 *(Williams)* REVISING AND ADOPTING THE SENATE RULES . . . . . 2493

3 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2007, TO THE SENATE . . . . . 2512

4 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2007, TO THE SENATE . . . . . 2513

5 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2007, TO THE SENATE . . . . . 2522

6 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 3, 2007, TO THE SENATE . . . . . 2523

8 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 13, 2007, TO THE SENATE . . . . . 2523

9 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 13, 2007, TO THE SENATE . . . . . 2526

10 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2007, TO THE SENATE . . . . . 2527



# LAWS

Enacted by the

## SIXTIETH LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government  
January 3, 2007, through April 27, 2007

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

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COMPILED BY MONTANA  
LEGISLATIVE SERVICES DIVISION

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## CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Appropriations.** The following amounts are appropriated from the state general fund for fiscal years 2007, 2008, and 2009 for the operation of the 60th legislature and the costs of preparing for the 61st legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	\$2,651,550
2. House of Representatives (26)	4,617,043
3. Legislative Services Division (22)	657,352

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

Approved February 1, 2007

## CHAPTER NO. 2

[HB 10]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Appropriation — reversion.** (1) Subject to subsection (2), up to \$5,062,271 is appropriated from the general fund to the department of natural resources and conservation forestry program.

(2) The appropriation contained in subsection (1) is intended to provide the necessary funding for fire costs in fiscal year 2006. The unspent balance of the appropriation must revert to the general fund.

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

Approved February 1, 2007

## CHAPTER NO. 3

[HB 42]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 17-5-205, MCA, is amended to read:

**“17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~March 15, 2005~~ [the effective date of this act].”

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

Approved February 1, 2007

## CHAPTER NO. 4

[HB 41]

AN ACT ELIMINATING RESTRICTIONS ON USE OF THE PRINCIPAL OF THE ENERGY CONSERVATION AND ENERGY ASSISTANCE ACCOUNT IN THE FEDERAL SPECIAL REVENUE FUND; AMENDING SECTION 90-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 90-4-215, MCA, is amended to read:

**“90-4-215. Account established — use.** (1) There is created an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

(2) The amounts deposited in the account and interest and earnings on the account may be used by the department of public health and human services to fund its low-income energy assistance and home weatherization programs created in 90-4-201. ~~However, the department may use the principal of the account only if the federal grants for either of those programs are reduced below the federal fiscal year 1987 level. The department may not use the principal to increase expenditures to either program above the level of the federal grant for that program for federal fiscal year 1987.”~~

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

Approved February 5, 2007

## CHAPTER NO. 5

[HB 21]

AN ACT ALLOWING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO PREPARE FOR INTRODUCTION DURING A SPECIAL SESSION OF THE LEGISLATURE AN ESTIMATE OF THE AMOUNT OF PROJECTED REVENUE; AMENDING SECTIONS 5-3-101 AND 5-5-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-3-101, MCA, is amended to read:

**“5-3-101. Convening of special session — limiting subjects — committee meetings — compensation.** (1) The legislature may be convened in special session by the governor or at the written request of a majority of the members. ~~The Subject to 5-5-227, the~~ governor or the legislature may limit the special session to the subjects specified in the call.

(2) (a) A standing committee of the legislature may meet prior to a special session for the purpose of holding hearings and taking action on preintroduced legislation that has been referred to that committee.

(b) Public notice of a hearing to be held by a standing committee prior to a special session must be given at least 7 days before the hearing.



(3) Members of the legislature engaged in pre-session business for a special session are entitled to receive compensation and expenses as provided in 5-2-302. Members of the legislature are entitled to receive compensation and expenses, as provided in 5-2-301, for the day prior to the convening of a special session.”

**Section 2.** Section 5-5-227, MCA, is amended to read:

**“5-5-227. Revenue and transportation interim committee — powers and duties — revenue estimating and use of estimates.** (1) The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) *The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.*

(3) The committee’s estimate, as introduced in the legislature, constitutes the legislature’s current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature’s estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.”

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

Approved February 13, 2007

## CHAPTER NO. 6

[HB 23]

AN ACT CORRECTING THE ERRONEOUS DEPOSIT TO A STATE SPECIAL REVENUE FUND OF A PERCENTAGE OF CERTAIN DRIVER’S LICENSE FEES; AMENDING SECTION 61-5-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-5-121, MCA, is amended to read:

**“61-5-121. Disposition of fees.** (1) Except as provided in subsection (3), the disposition of the fees from driver’s licenses, motorcycle endorsements, commercial driver’s licenses, and replacement driver’s licenses provided for in 61-5-114 is as follows:

~~(a)~~ The amount of 22.3% of each driver's license fee, 18.25% of each commercial driver's license fee, and 25% of each replacement driver's license fee must be deposited into an account in the state special revenue fund. Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection ~~(1)(a)~~ to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

~~(b)(a)~~ (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% of each commercial driver's license fee, and 3.75% of each replacement driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection ~~(1)(b)(i)~~ *(1)(a)(i)* must be deposited into the state general fund.

~~(e)(b)~~ (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection ~~(1)(e)(i)~~ *(1)(b)(i)* must be deposited into the state general fund.

~~(d)(c)~~ The amount of 20.7% of each driver's license fee, 16.94% of each commercial driver's license fee, and 8.75% of each replacement driver's license fee must be deposited into the state traffic education account.

~~(e)(d)~~ In addition to the amounts deposited pursuant to subsections ~~(1)(b)(ii)~~ *(1)(a)(ii)* and ~~(1)(e)(ii)~~ *(1)(b)(ii)*, the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee must be deposited into the state general fund.

~~(f)(e)~~ The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections ~~(1)(b)(i)~~ *(1)(a)(i)* and ~~(1)(e)(i)~~ *(1)(b)(i)* into the county general fund. The county treasurer or agent shall then remit all remaining fees to the state for deposit as provided in subsections ~~(1)(a)~~ and ~~(1)(d)~~ *(1)(c)* through ~~(1)(f)~~ *(1)(e)*.

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall deposit the fees as provided in subsections ~~(1)(a)~~ *(1)(a)(ii)*, ~~(1)(b)(ii)~~, ~~(1)(e)(ii)~~, and ~~(1)(d)~~ *(1)(c)* through ~~(1)(f)~~ *(1)(e)*.

(3) The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund."

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

Approved February 16, 2007

## CHAPTER NO. 7

[HB 470]

AN ACT CLARIFYING THAT IN THE SALE OF REAL PROPERTY FOR PAYMENT OF TAXES, INTEREST AND COSTS PAYABLE UPON REDEMPTION ACCRUE UNTIL THE DATE OF REDEMPTION AND MUST BE CALCULATED BY THE COUNTY TREASURER; AMENDING SECTIONS 15-18-212 AND 15-18-217, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-18-212, MCA, is amended to read:

**“15-18-212. Notice — proof of notice — penalty for failure to notify.**

(1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk *and recorder* shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk *and recorder* shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk *and recorder* as required in subsection (7) (8), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk *and recorder* as required in subsection (7) (8), the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk *and recorder* and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

- (a) the name of the interested party for whom the address is unknown;
- (b) a statement that the address of the interested party is unknown;
- (c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and
- (d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

- (a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;
- (b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);
- (c) the date that the property taxes became delinquent;
- (d) the date that the property tax lien attached as the result of a tax sale;
- (e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;
- (f) the name and address of the purchaser;
- (g) the name of the assignee if an assignment was made as provided in 15-17-323;
- (h) the date that the redemption period expires or expired;
- (i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period

expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, ~~that~~ a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

*(7) The amount of interest and costs provided for in subsection (6)(e) continues to accrue until the date of redemption. The total amount of interest and costs that must be paid for redemption must be calculated by the county treasurer as of the date of payment.*

~~(7)~~(8) Proof of notice in whatever manner given must be filed with the county clerk *and recorder*. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk *and recorder* within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

~~(8)~~(9) A county or any officer of a county may not be held liable for any error of notification.”

**Section 2.** Section 15-18-217, MCA, is amended to read:

**“15-18-217. Form of cancellation.** The notice of cancellation required by 15-18-212 of a tax lien as evidenced by a tax sale certificate or assignment may be made as follows:

I, ....., the treasurer of ..... County, certify that ..... (name of the purchaser or the purchaser’s agent or assignee) of ..... (address), purchased a tax lien ..... (tax sale certificate no. or tax lien assignment no.) on property owned by ..... (name of owner of record). See legal description attached as exhibit “A”, Tax Receipt No. .... on ..... (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to ..... (name of purchaser or the purchaser’s agent or assignee) that the tax lien will be canceled if the purchaser does not comply with provisions of 15-18-212 within 120 days from ..... (date of mailing of certified letter).

I further certify that the treasurer of ..... County has no record of notice by the owner of the tax lien in accordance with ~~15-18-212(7)~~ 15-18-212(8).

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this ..... (date).

.....  
Name of County Treasurer”

**Section 3. Applicability.** [This act] applies to a redemption for which penalties, interest, and costs are paid for after October 1, 2007.

Approved February 22, 2007

## CHAPTER NO. 8

[HB 121]

AN ACT CLARIFYING THE RESPONSIBILITY OF THE DEPARTMENT OF TRANSPORTATION FOR THE ADMINISTRATION OF THE HIGHWAY

TRAFFIC SAFETY PROGRAM; REQUIRING THE DEPARTMENT TO WORK WITH THE OFFICE OF PUBLIC INSTRUCTION TO PROVIDE SUPPORT AND MAINTENANCE OF DRIVER TRAINING FACILITIES; AND AMENDING SECTION 61-2-103, MCA.

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

**Section 1.** Section 61-2-103, MCA, is amended to read:

**“61-2-103. Duties.** (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the ~~Federal~~ *federal* Highway Safety Act, ~~of 1966~~ *23 U.S.C. 401 through 403*, and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor’s responsibilities under this part. For purposes of participation in the ~~Federal~~ *federal* Highway Safety Act ~~of 1966~~, *23 U.S.C. 401 through 403*, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of Title 20, chapter 7, part 5, or 20-9-603.

(2) The department shall:

(a) ~~advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools, certification of the schools and instructors, and establishment of adult training and retraining programs;~~

~~(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use; and~~

~~(e)(b) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention.; and~~

*(c) cooperate with the office of public instruction to provide support and maintenance of driver training facilities that comply with the federal Highway Safety Act, 23 U.S.C. 401 through 403.*

(3) The department of justice shall:

(a) establish a uniform system of driver licensing, including mental and physical standards; and

(b) prescribe and establish safety regulations for motor vehicles and operators.”

Approved March 1, 2007

## CHAPTER NO. 9

[HB 333]

AN ACT PROVIDING FOR AND REGULATING PARIMUTUEL WAGERING ON MATCH BRONC RIDES AND WILD HORSE RIDES; AMENDING

SECTIONS 23-4-101, 23-4-104, 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) “Board” means the board of horseracing provided for in 2-15-3106.

(2) “Board of stewards” means a board composed of three stewards who supervise race meets.

(3) “Department” means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) “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.

(5) “*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.

~~(5)~~(6) “Minor” means a person under 18 years of age.

~~(6)~~(7) “Persons” means individuals, firms, corporations, fair boards, and associations.

~~(7)~~(8) (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.

~~(8)~~(9) “Racing” means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

~~(9)~~(10) “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.

~~(10)~~(11) “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.

~~(11)~~(12) “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.

(13) “*Wild horse ride*” means *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 23-4-104, MCA, is amended to read:

**“23-4-104. Duties of board.** The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

(1) definitions;

- (2) auditing;
- (3) supervision of the parimutuel system;
- (4) corrupt practices;
- (5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;
- (6) licensing of all personnel who have anything to do with the substantive operation of racing;
- (7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;
- (8) the veterinary practices and standards which must be observed in connection with race meets;
- (9) absolute responsibility of trainers for the condition of horses and mules, regardless of the acts of third parties;
- (10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;
- (11) setting license fees commensurate with the cost of issuing a license;
- (12) the time, conduct, and supervision of simulcast races and parimutuel betting on simulcast races; ~~and~~
- (13) licensing, approval, and regulation of simulcast facilities; *and*
- (14) *licensing, approval, and regulation of match bronc rides and wild horse rides.*”

**Section 3.** Section 23-4-105, MCA, is amended to read:

**“23-4-105. (Temporary) Authority of board.** 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 must be deposited in the board’s agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) 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 engaged 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.

**23-4-105. (Effective July 1, 2007) Authority of board.** 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 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), and 23-4-302(3) 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.”



**Section 4.** Section 23-4-201, MCA, is amended to read:

**“23-4-201. Licenses.** (1) A person may not hold a race meet, including simulcast race meets under the parimutuel system, 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.

(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 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.”

**Section 5.** Section 23-4-202, MCA, is amended to read:

**“23-4-202. (Temporary) Penalty for violations of law — authority of board — judicial review.** (1) 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.

(2) The board or, upon the board’s authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board 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 forbid 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 the board's agency fund account. The board shall then distribute all funds collected under this subsection 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; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races; *and*

(j) *conduct and supervision of match bronc rides and wild horse rides.*

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

**23-4-202. (Effective July 1, 2007) Penalty for violations of law — authority of board — judicial review.** (1) 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.

(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 and statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection 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; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races; *and*

(j) *conduct and supervision of match bronc rides and wild horse rides.*

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

Approved March 12, 2007

## CHAPTER NO. 10

[SB 15]

AN ACT PROHIBITING THE PICKETING OF FUNERALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature reveres the rights of free speech, association, and privacy guaranteed or protected by both the state and federal constitutions; and

WHEREAS, the memorialization of a loved one is often a time of significant grief involving particularly somber and sacred rites and rituals, whether religious in nature or not; and

WHEREAS, people attending funerals, particularly loved ones and family members of the deceased, are involved in a circumstance of disquiet and grieving that civil society has traditionally recognized and accorded deepest respect and privacy; and

WHEREAS, the Legislature finds that it is likely that the circumstances of a funeral, including the gathering of many people at one place for solemn services during a time of mourning and emotional vulnerability, mean that picketing at a funeral subjects mourners to messages that the mourners are powerless to avoid and to which they are essentially captive, whether they agree with the messages or not; and

WHEREAS, it has been discovered that regardless of the picketers' message, picketing at a funeral to promote a position garners the picketers significant

attention to their message that they might not otherwise enjoy, not in the least by the fact that society finds such exploitation of another's grief shocking to the conscience; and

WHEREAS, the Legislature finds that funeral picketing may constitute a deliberate verbal or visual assault on funeral mourners who are powerless to avoid the assault; and

WHEREAS, the Legislature finds that the taking of unjust advantage of funeral mourners is a flagrant and egregious exploitation of grief that constitutes an assault that justifies proscription; and

WHEREAS, the Legislature recognizes the right of speakers to convey a message; and

WHEREAS, the Legislature recognizes the right of people to grieve and memorialize the death of a loved one; and

WHEREAS, the Legislature recognizes the need to carefully balance the rights of speakers against the privacy rights of those who may be unwilling and captive recipients of the speakers' message; and

WHEREAS, the Legislature finds that there is a significant government interest in preserving and protecting the sanctity and dignity of funeral services and in protecting funeral mourners from unwanted and unwarranted intrusion by strangers by narrowly tailoring the prohibition on funeral picketing for a relatively brief time period and only to a certain distance from funeral sites, thereby leaving open ample alternative channels of communication.

THEREFORE, the Legislature finds it necessary and right to enact this Right to Grieve in Privacy Act.

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

**Section 1. Funeral picketing — penalties.** (1) A person commits the offense of funeral picketing if the person knowingly engages in picketing within 1,500 feet of any property boundary entrance to or exit from a funeral site during the period from 1 hour before the scheduled commencement of the funeral services until 1 hour after the actual completion of the funeral services.

(2) A person convicted of funeral picketing shall be fined an amount not less than \$250 and not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 12 months, or both.

(3) This section does not affect any proceeding against a person for violation of any other provision of law. A district court may enjoin conduct proscribed by this section.

(4) In addition to, and not in lieu of, the penalties provided for in subsection (2), a district court may in a civil action award damages, including punitive damages, attorney fees, and other appropriate relief, to a person who suffers injury as a result of activity that may be a violation of this section.

(5) As used in this section, the following definitions apply:

(a) "Funeral" or "funeral services" means the ceremonies, rituals, and memorial services held in connection with the memorial of a deceased person or in connection with the burial, cremation, or other disposition of a human body, including the assembly and dispersal of the persons attending the funeral.

(b) "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other public or private place where a funeral is conducted.

(c) “Picketing” means the making of any noise or diversion that can reasonably be expected to disturb a funeral by:

(i) standing, sitting, or repeated walking, riding, driving, or other similar action by a person displaying or carrying a banner, placard, flag, sign, or similar device that is not a part of the funeral services;

(ii) engaging, with or without the use of a sound amplification device, in loud oration, speech, singing, chanting, whistling, or yelling that is not part of the funeral services;

(iii) distributing any handbill, pamphlet, leaflet, or other written or printed material other than written material that is distributed as part of the funeral services; or

(iv) obstructing or preventing the intended uses of a public street, public sidewalk, or other public space.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 1, and the provisions of Title 45, chapter 8, part 1, apply to [section 1].

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

**Section 5. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

Approved March 16, 2007

## CHAPTER NO. 11

[SB 54]

AN ACT GENERALLY REVISING LAWS RELATING TO LICENSING BOARDS; PROVIDING FOR JOINT MEETINGS OF BOARDS WITH A SIMILAR OR OVERLAPPING SCOPE OF PRACTICE OR DUAL LICENSURE; REVISING DEPARTMENT DUTIES TOWARD BOARDS; CHANGING THE BOARD OF ATHLETICS TO A PROGRAM; EXPANDING JURISDICTION OVER ATHLETIC EVENTS TO ANY COMBATIVE EVENT; REMOVING AN EXCEPTION FOR COMBATIVE EVENTS FOR CONTESTANTS UNDER 16 YEARS OF AGE CONDUCTED BY A RECOGNIZED AMATEUR ASSOCIATION; COMBINING THE BOARD OF LANDSCAPE ARCHITECTS WITH THE BOARD OF ARCHITECTS; REPEALING THE UNIFORM ATHLETE AGENTS ACT; AMENDING SECTIONS 2-15-1730, 2-15-1744, 2-15-1750, 2-15-1753, 2-15-1761, 18-2-113, 23-3-301, 23-3-402, 23-3-404, 23-3-405, 23-3-501, 23-3-502, 23-3-601, 23-3-602, 23-3-603, 37-1-101, 37-1-401, 37-65-102, 37-65-204, 37-65-323, AND 37-66-103, MCA; REPEALING SECTIONS 2-15-1762, 2-15-1772, 23-3-401, 23-3-403, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-120, 37-76-121, 37-76-122, AND 37-76-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Joint meetings — department duties.** (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

- (a) have licensees with dual licensure in related professions or occupations;
  - (b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:
    - (i) health care boards;
    - (ii) mental health care boards;
    - (iii) design boards;
    - (iv) therapeutic boards; or
    - (v) technical boards; or
  - (c) have issues of joint concern or related jurisdiction with each other.
- (2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

**Section 2.** Section 2-15-1730, MCA, is amended to read:

**“2-15-1730. Alternative health care board — composition — terms — allocation.** (1) There is an alternative health care board.

(2) The board consists of six members appointed by the governor with the consent of the senate. The members are:

- (a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;
- (b) one public member who is not a member of a profession regulated by the board; and
- (c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

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

~~(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state.”~~

**Section 3.** Section 2-15-1744, MCA, is amended to read:

**“2-15-1744. Board of social work examiners and professional counselors.** (1) (a) The governor shall appoint a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

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

~~(e)(3) The board is designated a quasi-judicial board. Members are appointed, serve, and are subject to removal in accordance with 2-15-124.~~

~~(2) Notwithstanding the qualifications for appointment contained in subsection (1), a person may be appointed to the board without being licensed as a professional counselor if he is issued a license under Title 37, chapter 23, within 30 days after his appointment.”~~

**Section 4.** Section 2-15-1750, MCA, is amended to read:

**“2-15-1750. Board of respiratory care practitioners.** (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

~~(3) The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state. Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.~~

(4) The board is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121.”

**Section 5.** Section 2-15-1753, MCA, is amended to read:

**“2-15-1753. Board of clinical laboratory science practitioners.** (1) There is a board of clinical laboratory science practitioners.

(2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment and who are actively engaged in their respective practices.

(3) Members are appointed by the governor, with consent of the senate. The members are:

(a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(b) three clinical laboratory science practitioners who, except for the initial appointments, hold active licenses as clinical laboratory science practitioners in Montana; and

(c) one public member who is not associated with or financially interested in the practice of clinical laboratory science.

(4) Following the initial appointments of members to the board, all members shall serve 4-year terms. The terms of the initial appointments must be staggered, with three members serving a 4-year ~~term~~ *terms* and two members serving a 2-year ~~term~~ *terms*. A member may not serve more than two consecutive terms.

(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.

(6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.

~~(7) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that a member of the board need not be an attorney licensed to practice law in this state.~~

~~(8)(7) Members of the board are entitled to compensation and travel expenses as provided by law."~~

**Section 6.** Section 2-15-1761, MCA, is amended to read:

**"2-15-1761. Board of architects and landscape architects.** (1) There is a board of architects *and landscape architects*.

(2) The board consists of ~~four~~ *six* members appointed by the governor with the consent of the senate. The members are:

(a) two ~~registered~~ *licensed* architects who have been in continuous practice for 3 years before their appointment;

(b) one ~~registered~~ *licensed* architect who is on the staff of the Montana state university-Bozeman school of architecture; ~~and~~

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture *or landscape architecture; and*

*(d) two licensed landscape architects.*

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

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

**Section 7.** Section 18-2-113, MCA, is amended to read:

**"18-2-113. Architects on public buildings to be certified.** A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a ~~certificate~~ *license* granted *under Title 37, chapter 65*, by the board of architects ~~entitling him to practice architecture in this state~~ *and landscape architects.*"

**Section 8.** Section 23-3-301, MCA, is amended to read:

**"23-3-301. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:



(1) ~~“Board” means the board of athletics provided for in 2-15-1772.~~

~~(2)(1) “Combative events” means a match, exhibition, contest, show, or tournament involving contestants in boxing, wrestling, mud wrestling, martial arts, or any other combative practice as defined by the department by rule.~~

~~(2) “Contestant” means a professional or semiprofessional practitioner of boxing, wrestling, mud wrestling, martial arts, or any other combative practice as defined by the department by rule.~~

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

~~(4) “Program” means a set of operations governed by the statutes in this chapter and the rules adopted by the department under this chapter.”~~

**Section 9.** Section 23-3-402, MCA, is amended to read:

~~“23-3-402. Enforcement of rules by board member — board designees. (1) In absence of a quorum of the board, any board member in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.~~

~~(2)(1) The board department may designate in writing representatives a representative to act specifically on behalf of the board department but only within the scope of the written authority.~~

~~(2) The representative shall attend and supervise a combative event and has the authority from the department to enforce rules adopted under this chapter.”~~

**Section 10.** Section 23-3-404, MCA, is amended to read:

~~“23-3-404. Board jurisdiction *Jurisdiction* — license required — contestant participation. (1) The board department has sole management, control, and jurisdiction over each professional or semiprofessional wrestling or boxing match or exhibition, including “so you think you are tough” boxing matches and mud wrestling; *combative event* involving recognition, a prize, or a purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a match or exhibition *combative event* conducted:~~

~~(a) by a university, college, or high school; or~~

~~(b) by the military; or~~

~~(c) for contestants under 16 years of age, by a recognized amateur association.~~

~~(2) No An organization or individual may not conduct a *combative event* match or exhibition within the board’s department’s jurisdiction unless it or he the organization or individual is the holder of an appropriate license granted by the board department.~~

~~(3) No A referee, manager, or judge may not participate in a match or exhibition *combative event* within the board’s department’s jurisdiction unless he is:~~

~~(a) the individual is licensed by the board department; and~~

~~(b) the match or exhibition *combative event* is conducted by an organization or individual licensed by the board department.~~

~~(4) No professional or semiprofessional boxer or wrestler A contestant may not participate in a match or exhibition *combative event* within the board’s department’s jurisdiction unless he is:~~

- (a) ~~the contestant is licensed by the board and department;~~
- (b) ~~the match or exhibition combative event is conducted by an organization or individual licensed by the board and his right department; and~~
- (c) ~~the department has not suspended the right of the contestant to participate has not been suspended under 23-3-603."~~

**Section 11.** Section 23-3-405, MCA, is amended to read:

**"23-3-405. Rules.** (1) The ~~board~~ department may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct ~~matches or exhibitions combative events~~ or to be licensed as referees, managers, or judges. License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

- (i) the labeling of a match as a championship match;
- (ii) the number and length of rounds and the weight of gloves;
- (iii) the extent and timing of the physical examination of contestants;
- (iv) the attendance of a referee and the referee's powers and duties; and
- (v) review of decisions made by officials.

(3) The rules must:

(a) meet or exceed the safety codes required by recognized professional boxing ~~and, wrestling, and other organizations conducting combative events;~~

(b) provide reasonable measures for the fair conduct of the ~~matches or exhibitions combative events~~ and for the protection of the health and safety of the contestants;

(c) require a physical examination of each contestant prior to each ~~match or exhibition combative event;~~

(d) provide for the qualifications of judges, referees, and seconds and for their payment by the promoter; and

(e) provide for the attendance at ringside of one or more of the following and require the promoter to pay for that person's attendance:

- (i) a licensed physician as defined in 37-3-102;
- (ii) a licensed physician assistant as defined in 37-20-401; or
- (iii) a licensed advanced practice registered nurse as defined in 37-8-102."

**Section 12.** Section 23-3-501, MCA, is amended to read:

**"23-3-501. Licenses — fees.** (1) The ~~board~~ department may issue a license to a professional or semiprofessional ~~boxing or wrestling~~ promoter of *combative events*, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional ~~matches or exhibitions combative events~~.

(2) The ~~board~~ department may issue licenses to qualified referees, managers, ~~boxers, wrestlers,~~ contestants, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, as provided in 37-1-134, set by the ~~board~~ *department*.”

**Section 13.** Section 23-3-502, MCA, is amended to read:

**“23-3-502. Bond — conditions.** (1) ~~No~~ A license to conduct professional or semiprofessional ~~matches or exhibitions~~ *combative events* may *not* be issued unless the licensee has executed a bond in the sum of not less than \$5,000.

(2) The bond must be conditioned on faithful compliance by the licensee with the provisions of this chapter and the rules of the ~~board~~ *department*.”

**Section 14.** Section 23-3-601, MCA, is amended to read:

**“23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received.** (1) An individual or organization licensed to conduct a ~~boxing or wrestling~~ *combative event match or exhibition* must *shall*, within 24 hours after the completion of each *combative event match or exhibition*, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the *combative event match or exhibition*, the amount of gross proceeds, and other matters as *that* the ~~board department~~ prescribes and *must shall* also within 24 hours pay to the department a tax of 5% of its total gross receipts, after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department ~~or the board~~ under this chapter must be deposited in the state special revenue fund for the use of the ~~board program~~, subject to 37-1-101(6).”

**Section 15.** Section 23-3-602, MCA, is amended to read:

**“23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax.** (1) If an individual or organization fails to make a report of a *combative event contest* at the time prescribed by 23-3-601 or if the report is unsatisfactory to the ~~board department~~, the ~~board department~~ may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a *combative event contest* and the amount of tax due under this chapter.

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to ~~such delinquent the individual or organization~~ of the amount due, the delinquent *individual or organization* forfeits its license and is disqualified from receiving a new license.”

**Section 16.** Section 23-3-603, MCA, is amended to read:

**“23-3-603. Discipline.** (1) A license issued under the provisions of this chapter may, after notice and opportunity for hearing, be revoked or suspended by the ~~board department~~ for a violation of the provisions of this chapter or any rule of the ~~board department~~.

(2) The ~~board department~~ may, after notice and opportunity for hearing, reprimand any ~~professional or semiprofessional athlete~~ *contestant* or suspend, for a period not to exceed 1 year, ~~his~~ *the contestant's* right to participate in any *combative event match or exhibition* conducted by any licensee for:

(a) ~~unsportsmanlike~~ conduct *unbecoming a contestant* while engaged in or arising directly from any *combative event match or exhibition*;

(b) failure to compete in good faith or engaging in any sham *combative event match or exhibition*; or

(c) the use of threatening or abusive language toward officials or spectators.”

**Section 17.** Section 37-1-101, MCA, is amended to read:

**“37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board *or a program* within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual’s board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) (a) provide notice to the *board and to the* appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) *suspend all duties under this title related to the board except for services related to renewal of licenses;*

(c) *review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board’s operations to achieve fiscal solvency; and*

(d) *notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;*

(10) monitor a board’s cash balances to ensure that the balances do not exceed two times the board’s annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.”

**Section 18.** Section 37-1-401, MCA, is amended to read:

**“37-1-401. Uniform regulation for licensing programs without boards — definitions.** As used in this part, the following definitions apply:

(1) “Complaint” means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

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

(3) “Investigation” means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) “License” means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35; *or* 72, ~~or 76~~; or

(b) Title 50, chapter 39, 74, or 76.

(5) “Profession” or “occupation” means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35; *or* 72, ~~or 76~~; or

(b) Title 50, chapter 39, 74, or 76.”

**Section 19.** Section 37-65-102, MCA, is amended to read:

**“37-65-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) “Architect” means an individual *who is* technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) “Board” means the board of architects *and landscape architects* provided for in 2-15-1761.

(3) “Building” means a structure intended primarily for human occupancy or use.

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

(5) “Practice of architecture” means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in those activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) “Public building” means any building that the state or any political subdivision of the state maintains for the use of the public.”

**Section 20.** Section 37-65-204, MCA, is amended to read:

**“37-65-204. Rulemaking.** The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of *Title 37, chapter 66*, and this chapter in accordance with the provisions of the Montana Administrative Procedure Act.”

**Section 21.** Section 37-65-323, MCA, is amended to read:

**“37-65-323. Injunction.** Whenever the board of architects has reasonable cause to believe that a person is violating any provision of *Title 37, chapter 66*, this chapter, or a rule of the board, it may, in addition to the remedies provided in 37-65-322 or 37-66-322, as appropriate, and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such the person from continuing to engage in such the violation or from doing any act in furtherance thereof that contributes to the violation.”

**Section 22.** Section 37-66-103, MCA, is amended to read:

**“37-66-103. Definitions.** As used in this chapter, the following definitions apply:

(1) “Board” means the board of *architects and* landscape architects provided for in ~~2-15-1762~~ 2-15-1761.

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

(3) “Landscape architect” means a person who holds a certificate license to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) (a) “Landscape architecture” means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. ~~It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans.~~ It is the design discipline specifically oriented to addressing the problems involved in adapting man’s the uses of land to the characteristics of the exterior environment both functionally and aesthetically. ~~It~~

(b) *The term includes regional planning of natural resources; urban and rural planning and design; institutional design; park and recreation planning and design; contract negotiations; the preparation of project master plans, contract documents, construction specifications, construction cost estimates, and project contracts.* ~~It includes contract negotiations,; project management,; and construction management.~~

(c) The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.”

**Section 23. Deposit of license fees.** Money received by the department for license fees from landscape architects must be deposited in the state special revenue fund for the use of the board subject to 37-1-101(6).

**Section 24. Repealer.** Sections 2-15-1762, 2-15-1772, 23-3-401, 23-3-403, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-120, 37-76-121, 37-76-122, and 37-76-123, MCA, are repealed.

**Section 25. Codification instruction.** (1) [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].

(2) [Section 23] is intended to be codified as an integral part of Title 37, chapter 66, part 3, and the provisions of Title 37, chapter 66, part 3, apply to [section 23].

**Section 26. Effective date.** [This act] is effective July 1, 2007.

Approved March 16, 2007

## CHAPTER NO. 12

[SB 97]

AN ACT CLARIFYING THAT THE DEPARTMENT OF JUSTICE MAY RECEIVE A WORKERS' COMPENSATION PAYMENT FOR A HIGHWAY PATROL MEMBER RECEIVING A DEPARTMENT OF JUSTICE SALARY BENEFIT; AMENDING SECTIONS 39-71-742, 39-71-743, AND 44-1-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 39-71-742, MCA, is amended to read:

**“39-71-742. Who may receive payment.** (1) ~~Where payment is A payment due to a child under 18 years of age or to a person adjudged incompetent, the same shall~~ *must* be made to the parent or to the duly appointed guardian, ~~as the case may be,~~ and the written receipt of such parent or guardian *for the payment shall* ~~must~~ acquit the employer, the insurer, or ~~the department,~~ *as the case may be,* of further liability.

*(2) A payment due to a member of the highway patrol receiving the salary benefit provided in 44-1-511 must be made to the department of justice to offset the salary benefit until the member is no longer eligible to receive the salary benefit.*

~~(2)(3)~~ In other cases, payment ~~shall~~ *must* be made to the person entitled ~~thereto to the payment~~ or to ~~his~~ *duly* the person's authorized representative.”

**Section 2.** Section 39-71-743, MCA, is amended to read:

**“39-71-743. Assignment or attachment of payments.** (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter; ~~or~~

*(d) as provided in 39-71-742; or*

~~(d)(e)~~ for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to

court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

**Section 3.** Section 44-1-511, MCA, is amended to read:

**"44-1-511. Payment of salary benefit to officers injured in performance of duty.** ~~(1)~~ A member of the highway patrol who, in the performance of ~~his~~ *the member's* duties, suffers an injury ~~which that~~ necessitates medical or other remedial treatment and ~~which that~~ renders ~~him~~ *the member* unable to perform ~~his~~ *the member's* duties ~~shall~~ *must* be paid the full amount of ~~his~~ *the member's* regular salary as a salary benefit until one of the following occurs:

~~(a)~~ *He (1) the member* ceases to be disabled-;

~~(b)~~ *A (2) a* period of 1 year elapses after the date of the injury-;

~~(c)~~ *Although (3) although* disabled, ~~he~~ *the member* is ordered returned to light duty by the chief of the highway patrol-;

~~(d)~~ *Although (4) although* disabled, ~~he~~ *the member* accepts a transfer position within the department of justice-; *or*

~~(e)~~ *He (5) the member* waives ~~his~~ *the* benefit.

~~(2)~~ *The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section."*

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

Approved March 16, 2007

## CHAPTER NO. 13

[SB 101]

AN ACT AUTHORIZING THE PLACEMENT OF A PLAQUE TO COMMEMORATE THE ORIGINAL HEADQUARTERS OF THE MONTANA HIGHWAY PATROL; AND AMENDING SECTION 2-17-808, MCA.

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

**Section 1.** 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.

(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, ~~and the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;~~ and

(d) the busts of Lee Metcalf and Sam W. Mitchell.

(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).”

Approved March 16, 2007

## CHAPTER NO. 14

[HB 44]

AN ACT ELIMINATING THE SCHOOL BOND CONTINGENCY LOAN FUND; AMENDING SECTIONS 17-5-703 AND 17-5-704, MCA; REPEALING SECTIONS 20-9-466 AND 20-9-467, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** 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;

~~(f) a coal severance tax school bond contingency loan fund;~~ and

~~(g)~~(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) through (5) and (4).

~~(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.~~

~~(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.~~

~~(4)(3) (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).~~

~~(b) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).~~

~~(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.~~

~~(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.~~

~~(5)(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 and in excess of amounts that are transferred pursuant to subsection (3).~~

~~(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.~~

~~(6)~~(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)

**17-5-703. (Effective July 1, 2016) Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

~~(e) a coal severance tax school bond contingency loan fund;~~ and

~~(f)~~(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) through ~~(5)~~ and (4).

~~(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.~~

~~(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.~~

~~(4)~~(3) (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

~~(5)~~(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 ~~and in excess of amounts that are transferred pursuant to subsection (3).~~

(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.

~~(6)~~(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 2.** Section 17-5-704, MCA, is amended to read:

**“17-5-704. Investment of funds.** Money in the coal severance tax bond fund, the coal severance tax permanent fund, *and* the coal severance tax income fund, ~~and the coal severance tax school bond contingency loan fund~~ must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings, excluding unrealized gains and losses, from all funds must be deposited in the state general fund.”

**Section 3. Repealer.** Sections 20-9-466 and 20-9-467, MCA, are repealed.

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

Approved March 16, 2007

## CHAPTER NO. 15

[HB 72]

AN ACT REVISING THE PROFESSIONAL EMPLOYER ORGANIZATION LAW; ESTABLISHING REQUIREMENTS FOR THE DEPARTMENT OF LABOR AND INDUSTRY PERTAINING TO BACKGROUND CHECKS RELATED TO PROFESSIONAL EMPLOYER ORGANIZATION LICENSING; ALLOWING WAIVERS OF CERTAIN PERIODIC REPORTING REQUIREMENTS; REQUIRING PROOF OF MONTANA WORKERS' COMPENSATION INSURANCE COVERAGE; AMENDING SECTIONS 39-8-202, 39-8-205, AND 39-8-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-8-202, MCA, is amended to read:

**“39-8-202. Initial license application — application fee — standards — provisional license.** (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

- (a) \$750 for a resident or nonresident unrestricted license; and
- (b) \$500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group must meet *one of* the following *applicable* standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not exist.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have filed any required documents with the secretary of state and ~~must~~ *shall* remain in good standing ~~in order~~ to conduct business pursuant to this chapter.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must have filed any required documents with the secretary of state and ~~must~~ *shall* remain in good standing ~~in order~~ to conduct business pursuant to this chapter.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) (a) An applicant shall also provide:

~~(a)~~(i) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

~~(b)~~(ii) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

~~(c)~~(iii) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(b) (i) *As a prerequisite to the issuance of a license, the department shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.*

(ii) *The applicant shall sign a release of information to the department and is responsible to the department of justice for the payment of all fees associated with the criminal background check.*

(iii) *Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.*

(iv) *At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.*

(c) *If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust, and if the department determines that the applicant is not, the license may be denied.*

(6) (a) Except for an applicant who is granted a restricted license under subsection (9), an applicant shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by:

(i) providing financial statements that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles; or

(ii) providing independently compiled financial statements and a \$100,000 security deposit in a form that is acceptable to the department.

(b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.

(c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.

(ii) Financial statements submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.

(iii) If an applicant is unable to meet the \$50,000 net worth requirement, the applicant shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than \$50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations.

(7) The applicant shall maintain a positive working capital, as evidenced by financial statements.

(8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.

(9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, *and* the applicant is licensed and in good standing in that state and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(10) An applicant for a ~~restricted~~ license shall appoint a recognized and approved entity as its registered agent to receive service of legal process issued against it in this state *if a registered agent has not already been appointed*.

(11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.

(12) A license issued under 39-8-204 or this section may not be transferred."

**Section 2.** Section 39-8-205, MCA, is amended to read:

**"39-8-205. Renewal fees.** (1) The fee for the renewal of a resident or nonresident unrestricted license is \$750.

(2) The fee for the renewal of a restricted license is \$500.

(3) The application fee required in 39-8-202 does not apply to the renewal of an unrestricted license.

~~(4) A restricted license may not be granted to a professional employer organization or group that is a resident of or domiciled in another state if the state requires licensing but does not grant a similar privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.~~

~~(5)(4) Fees collected must be used by the department to implement this chapter."~~

**Section 3.** Section 39-8-207, MCA, is amended to read:

**"39-8-207. Requirements of licensee.** (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;



(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter. *The department, by rule, may waive the requirements of this subsection (2)(b) if the licensee provides to the department an affidavit from an organization of the type specified in 39-8-202(8).*

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating ~~an employee leasing arrangement or a professional employer arrangement or employee leasing arrangement.~~

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) (a) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(b) When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of *Montana* workers' compensation coverage for ~~all employees assigned to any client location in this state~~ *the professional employer organization or group*.

(5) A professional employer organization or group is an employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements. This section does not preclude the client from providing benefits to employees coemployed by a professional organization or group.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization *or group* that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.”

**Section 4. Effective date.** [This act] is effective July 1, 2007.

Approved March 16, 2007

## CHAPTER NO. 16

[HB 115]

AN ACT REVISING AND CLARIFYING THE REQUIREMENTS FOR THE PUBLICATION OF ANNUAL AND BIENNIAL HUNTING, FISHING, TRAPPING, AND LAND USE REGULATIONS, SPECIAL SEASON CLOSURES, CREATION OR CLOSURE OF PRESERVES, REFUGES, SANCTUARIES, REST GROUNDS, OR CLOSED DISTRICTS, AND EMERGENCY CLOSURES OF DEPARTMENT OF FISH, WILDLIFE, AND PARKS LANDS AND PUBLIC WATERS THAT ARE ADOPTED BY THE FISH, WILDLIFE, AND PARKS COMMISSION; AMENDING SECTIONS 87-1-202 AND 87-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-1-202, MCA, is amended to read:

**“87-1-202. Posting and publication *Publication of orders, and rules, and regulations.*** (1) ~~The orders, and regulations of the department shall adopted by the commission setting seasonal hunting, fishing, trapping, and land use regulations must be published and posted in the following manner:~~ *Except as provided in subsection (2), annual and biennial rules, and regulations of the department shall adopted by the commission setting seasonal hunting, fishing, trapping, and land use regulations must be published and posted in the following manner:*

~~(1) Those having general application throughout the state shall be published in such manner and to such an extent as the department deems necessary and may direct in a pamphlet format that is made available to the public at all department offices and through all license providers.~~

~~(2) Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable and shall be posted in three conspicuous places in the locality or district in which they are applicable. Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures~~

for management purposes, must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

- (i) use of the department's website;
- (ii) use of a telephone hotline number; or
- (iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

**Section 2.** Section 87-5-402, MCA, is amended to read:

**"87-5-402. Posting of notice and additional provisions.** (1) Preserves, refuges, sanctuaries, rest grounds, or closed districts ~~made or created by said the~~ department and any land or water areas or portions thereof of preserves, refuges, sanctuaries, rest grounds, or closed districts closed by said the department shall must be conspicuously posted for a period of 20 days, with posters setting forth their purposes and the penalties for violating the orders, and rules, and regulations of the department applicable to them. Not less than 20 days before creation of any fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said department, or closed district or closure of land or water areas becomes effective, publication shall must be made as provided in 87-1-202 of the boundaries of such the fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said department or closed district, such with boundaries to be accurately designated by definite topographic monuments or public land survey. Publication must be in a newspaper having general circulation in the locality of the fish and game district, preserve, refuge, sanctuary, rest ground, or closed district.

(2) The hunting, pursuing, capturing, killing, or taking of any fish, game animals, game birds, or fur-bearing animals in violation of the orders, rules, or regulations, or orders of the department governing any closed season, fish and game district, preserve, refuge, sanctuary, preserve, rest ground, or closed land or water area promulgated by said the department shall be is punishable with by the same penalties as provided for the violation of the state fish and game laws of this state regarding closed seasons.

(3) All game preserves or refuges heretofore created are continued in full force and effect until such time as the same are they are changed by the department in the manner herein designated in this section. Said The department shall have has the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, excepting except the Sun River game preserve, when, in the opinion of said the department, it is to in the best interest so to do so."

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

Approved March 16, 2007

## CHAPTER NO. 17

[HB 122]

AN ACT INCREASING THE DEPARTMENT OF TRANSPORTATION'S AUTHORIZED LEASE TERM FROM 10 YEARS TO 40 YEARS ON LEASES FOR SPACE, IMPROVEMENTS, OR EQUIPMENT IN STATE AIRPORTS; AND AMENDING SECTION 67-2-302, MCA.

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

**Section 1.** Section 67-2-302, MCA, is amended to read:

**“67-2-302. State airports — operation.** (1) The department may:

(a) lease, for a term not exceeding 40 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either for operation;

(b) lease or assign, for a term not exceeding ~~10~~ 40 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality of the United States for purposes incidental to or for aeronautical purposes; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in conferring the concessions, the public may not be deprived of its rightful, equal, and uniform use of the subject of the concessions.

(2) The department may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the property may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges must be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations.”

Approved March 16, 2007

## CHAPTER NO. 18

[HB 126]

AN ACT REPEALING THE REQUIREMENT THAT THE DEPARTMENT OF TRANSPORTATION SET LIABILITY INSURANCE RATES FOR COMMERCIAL AIR CARRIERS; REPEALING SECTIONS 67-3-401, 67-3-402, 67-3-403, 67-3-404, AND 67-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** Sections 67-3-401, 67-3-402, 67-3-403, 67-3-404, and 67-3-405, MCA, are repealed.

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

Approved March 16, 2007

## CHAPTER NO. 19

[HB 127]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO MAKE IMMEDIATE DEPOSIT OF AIRCRAFT REGISTRATION FEES TO THE GENERAL FUND; AND AMENDING SECTION 67-3-205, MCA.

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

**Section 1.** Section 67-3-205, MCA, is amended to read:

**“67-3-205. Aircraft registration account — source of funds — allocation.** (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft, as required in ~~this part 15-24-304~~ and ~~15-24-304 this part~~, and all penalties collected for registration violations, as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the state general fund; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)(a) must be made ~~twice annually when received~~ by the department. ~~The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.~~

~~(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.”~~

Approved March 16, 2007

## CHAPTER NO. 20

[HB 219]

AN ACT ADDING DEFINITIONS OF “SELL” AND “STORAGE LOT” TO MOTOR VEHICLE DEFINITIONS; PROVIDING THAT A DEALER MAY STORE MOTOR VEHICLES ON A STORAGE LOT UNDER CERTAIN

CIRCUMSTANCES; AMENDING SECTIONS 61-1-101 AND 61-4-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** 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 must 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) “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.

(5) “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.

(6) “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.

(7) (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 (7):

(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.

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

(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "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.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(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 (11)(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.

(12) "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.

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

(14) "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.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "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.

(17) "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.

(18) "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.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "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.

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

(22) “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.

(23) “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.

(24) “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.

(25) “Manufactured home” has the meaning provided in 15-1-101.

(26) “Manufacturer” includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) “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.

(28) “Mobile home” or “housetrailer” has the meaning provided in 15-1-101.

(29) (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.

(30) (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.

(31) (a) “Motorcycle” means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. 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.

(32) (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.

(33) “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.

(34) (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.

(35) (a) “Motor vehicle” means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 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.

(36) “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.

(37) “Nonresident” means a person who is not a resident of this state.

(38) (a) “Not used for general transportation purposes” means the operation of a motor vehicle, registered as a collector’s item, a custom vehicle, or a street rod, to or from a car 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.

(39) (a) "Off-highway vehicle" means a self-propelled vehicle used 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) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

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

(41) "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.

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

(43) "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.

(44) "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.

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

(46) (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.

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

(48) (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.

(49) “Recreational vehicle” includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50) “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.

(51) “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, or pole trailer 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.

(52) “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.

(53) “Retail sale” means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54) “Revocation” means that the driver’s license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55) “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.

(56) (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.

(57) “Sell” means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(57)(58) “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.

(58)(59) “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.

(59)(60) “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.

~~(60)~~(61) (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.

~~(61)~~(62) (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.

~~(62)~~(63) (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.

*(64) "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.*

~~(63)~~(65) "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.

~~(64)~~(66) "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.

(65)(67) "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

(66)(68) "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.

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

(68)(70) (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.

(69)(71) "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.

(70)(72) "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.

(71)(73) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(72)(74) "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.

(73)(75) "Under the influence" has the meaning provided in 61-8-401.

(74)(76) "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.

(75)(77) “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.

(76)(78) (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.

(77)(79) “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.

(78)(80) “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.

(79)(81) “Wholesaler” means a person, firm, partnership, association, or corporation 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, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1.”

**Section 2.** Section 61-4-123, MCA, is amended to read:

**“61-4-123. Dealer requirements and restrictions.** (1) A dealer may not offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer’s established place of business or any approved off-premises sale location a motor vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer’s guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the motor vehicle or is conspicuously displayed within the motor vehicle in a fashion that is readily readable by a customer.

(3) (a) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer’s established place of business as listed on the dealer’s license.

(b) *A dealer may park a motor vehicle in a storage lot if:*

(i) *local zoning regulations permit that type of use;*

(ii) *the lot is in the county where the dealer’s established place of business is located;*

(iii) *the dealer does not sell or advertise the sale of the motor vehicle at the lot;*  
and

*(iv) if applicable, the placement of the motor vehicle complies with the dealer's franchise agreement.*

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. Except for recreational vehicle, motor home, or travel trailer dealers, an off-premises display and sale must be conducted within the county of the dealer's licensed location. The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more motor vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one motor vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the motor vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the motor vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays motor vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all motor vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any motor vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to a customer or that otherwise may be operated by a customer in the regular course of the dealer's business operations.

(b) A dealer shall ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the

minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory motor vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that motor vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

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

Approved March 16, 2007

## CHAPTER NO. 21

[HB 292]

AN ACT ALLOWING A COUNTY TO ENTER INTO LEASE-PURCHASE AGREEMENTS FOR A PERIOD NOT TO EXCEED 20 YEARS FOR THE CONSTRUCTION, FURNISHING, AND PURCHASING OF A DETENTION CENTER AND TO LEASE COUNTY PROPERTY USED FOR A DETENTION CENTER FOR A PERIOD NOT TO EXCEED 30 YEARS; AMENDING SECTIONS 7-8-2231 AND 7-32-2201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-8-2231, MCA, is amended to read:

**"7-8-2231. Authorization to lease county property.** (1) The board of county commissioners has jurisdiction and power, under ~~such~~ limitations and restrictions as *that* are prescribed by law, to lease and ~~demise~~ *transfer* county property, however acquired, ~~which that~~ is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. ~~Such~~ *The* leases ~~shall must~~ be made in ~~such~~ *a* manner and for ~~such~~ purposes as *that*, in the judgment of the board, ~~shall seem~~ *are* best suited to advance the public benefit and welfare.

(2) Except as provided in 7-8-2233 and 7-32-2201(5):

- (a) all ~~such~~ property must be leased subject to sale by the board; and
- (b) ~~no~~ a lease ~~shall may not~~ be for a period to exceed 10 years."

**Section 2.** Section 7-32-2201, MCA, is amended to read:

**"7-32-2201. Establishing detention center — detention center contract — regional detention center — authority for county to lease its property for detention center.** For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:

(1) A detention center may be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the governing body of two or more local governments it is necessary or desirable to build, provide, or ~~utilize~~ *use* a multijurisdictional detention center, they may do so in any of the jurisdictions concerned. The multijurisdictional detention

center ~~shall~~ *must* be built or provided and kept in good repair at the expense of the local governments concerned on a basis as the governing bodies agree.

(2) A county or two or more local governments acting together may provide for the detention center allowed by subsection (1) by:

(a) establishing in the county government the position of detention center administrator and hiring a person, who is answerable to the governing body of the county, to fill the position or appointing the sheriff as detention center administrator; or

(b) entering into an agreement with a private party under which the private party will provide, maintain, or operate the detention center.

(3) The detention centers in this state are kept by the detention center administrators of the local governments in which they are situated. In the case of a multijurisdictional detention center as provided in subsection (1), the detention center ~~shall~~ *must* be kept by the local governments ~~utilizing~~ *using* the detention center on a basis as the governing bodies agree.

(4) The board of county commissioners has jurisdiction and power, under ~~such~~ limitations and restrictions as *that* are prescribed by law, to cause a detention center to be erected, furnished, maintained, and operated. The costs must be paid for out of the county treasury.

(5) *The board of county commissioners has the power to lease to any person or entity any real or personal property of the county necessary or appropriate for use as a detention center. A lease entered into under this section must be for a period not to exceed 30 years and may not be limited by 7-8-2231.*

(6) *A county or two or more local governments acting together may enter into a lease-purchase agreement with a person or entity for a period not to exceed 20 years for the construction, furnishing, and purchasing of a detention center."*

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

Approved March 16, 2007

## CHAPTER NO. 22

[HB 419]

AN ACT ALLOWING A TOWN OR THIRD-CLASS CITY TO PLACE GAS TAX FUNDS IN A RESTRICTED ASSET ACCOUNT WITHIN THE GAS TAX APPORTIONMENT FUND UNTIL AN EXPENDITURE IS NEEDED; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-70-101, MCA, is amended to read:

**"15-70-101. Disposition of funds.** (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of

transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of \$16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of \$100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of \$6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of \$10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of

commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys. *The governing body of a town or third-class city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure.*

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of \$25,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs.”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved March 16, 2007

## CHAPTER NO. 23

[HB 431]

AN ACT REQUIRING THAT THE DEPARTMENT OF LIVESTOCK DEFINE "CLASS" AS IT PERTAINS TO CLASSES OF UTILIZATION OF MILK BY RULE AND USE THE CURRENT DEFINITIONS OF CLASSES OF UTILIZATION OF MILK THAT ARE FOUND IN THE CODE OF FEDERAL REGULATIONS; ALLOWING THE DEPARTMENT TO COMBINE ANY OF THE CLASSES OF MILK PROVIDED FOR IN THE FEDERAL DEFINITIONS INTO A SINGLE CLASS; AND AMENDING SECTIONS 81-23-101 AND 81-23-302, MCA.

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

**Section 1.** Section 81-23-101, MCA, is amended to read:

**"81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

~~(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, eggnog, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.~~

~~(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.~~

~~(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.~~

*(b) (i) "Class" refers to the classes of utilization of milk that the department shall define by rule.*

*(ii) In adopting rules under this subsection (1)(b), the department shall use the current definitions of classes of utilization of milk that are found in Title 7 CFR, part 1000.40, except that the department may combine any of the classes of milk provided for in the federal definitions into a single class.*

~~(e)(c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.~~

~~(f)(d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.~~

~~(g)(e) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.~~

~~(h)(f) "Licensee" means a person who holds a license from the department.~~

~~(i)(g) "Market" means an area of the state designated by the department as a natural marketing area.~~

(j)(h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which are designated as grade A by a constituted health authority and including those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(k)(i) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(l)(j) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(m)(k) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(n)(l) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(o)(m) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The department may assign new milk products, ~~not expressly included in one of the classes defined in this section,~~ to the class that ~~in its discretion it determines to be~~ *the department considers proper.*

**Section 2.** Section 81-23-302, MCA, is amended to read:

**"81-23-302. Establishment of minimum prices.** (1) The board shall, *by adopting rules*, fix minimum producer prices for ~~class I, class II, and class III~~ milk by ~~adopting rules in a manner prescribed by the Montana Administrative Procedure Act~~ *classes of utilization of milk as defined by the department.*

(2) The board shall establish prices by means of flexible formulas that must be devised so that ~~they~~ *the formulas* bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in ~~its~~ *the department's* employment indicate will or should be shown at the hearing so that all interested parties will have *an* opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:



(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider; so that all interested parties will have *an* opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk ~~in classes I, II, and III~~ must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state, ~~provided that~~ *if* milk is available from Montana producers at the price set by the board.

(11) ~~The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.~~

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend ~~an official~~ a rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by ~~official~~ order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by ~~official~~ order to establish the arrangement. An ~~official~~ order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The ~~official~~ order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing ~~as required under the Montana Administrative Procedure Act.~~

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be enforced and audited for compliance by the department.”

Approved March 16, 2007

## CHAPTER NO. 24

[HB 18]

AN ACT REPEALING THE STATUTORY TIME LIMIT FOR FILING TRAVEL EXPENSE VOUCHERS FOR MULTICOUNTY TRAVEL BY DISTRICT COURT JUDGES IN MULTICOUNTY DISTRICTS; REPEALING SECTION 3-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** Section 3-5-216, MCA, is repealed.

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

Approved March 22, 2007

## CHAPTER NO. 25

[HB 38]

AN ACT AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE LICENSES AT REDUCED PRICES TO HARVEST ANTLERLESS MOOSE, COW OR CALF BISON, AND ADULT EWE MOUNTAIN SHEEP FOR MANAGEMENT PURPOSES; CLARIFYING THE ISSUANCE OF LICENSES FOR A SECOND ELK; AMENDING SECTIONS 87-2-104, 87-2-505, AND 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-104, MCA, is amended to read:

**“87-2-104. Number of licenses allowed — fees.** (1) It is unlawful for **any** a person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(3) When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 *resident deer A*, Class A-4 *resident deer B*, Class A-5, Class A-7, Class B-7 *nonresident deer A*, Class B-8 *nonresident deer B*,

~~Class B-10, Class B-11, or special antelope license to an applicant; and An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.~~

~~(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.~~

~~(4) For all of the game management licenses issued under subsection (3), 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.~~

~~(5) When authorized by the commission for game management purposes, the department may issue Class A-9, resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 or Class B-13 license to be eligible for a Class B-12 license. Unless otherwise reduced pursuant to subsection (6), 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.~~

~~(5)(6) The fee for any a resident or nonresident license of any class issued under subsection (3) must or (5) may be set reduced annually by the department and may not exceed the regular fee provided by law for that class or species."~~

**Section 2.** Section 87-2-505, MCA, is amended to read:

**"87-2-505. Class B-10—nonresident big game combination license.**

(1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of \$628 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.

~~(3) A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is \$273. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission."~~

**Section 3.** Section 87-2-702, MCA, is amended to read:

**“87-2-702. Restrictions on special licenses.** (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2), a person who receives a moose, mountain goat, or limited mountain sheep license, ~~with the exception of an adult ewe license~~, as authorized by 87-2-701, ~~with the exception of an antlerless moose or an adult ewe game management license issued under 87-2-104~~, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), “limited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is restricted.

(b) Except as provided in 87-1-271(2), a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), “unlimited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is not restricted.”

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

Approved March 22, 2007

## CHAPTER NO. 26

[HB 46]

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

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

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

**“10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2005~~ 2007, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2005~~ 2007, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise

inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.”

Approved March 22, 2007

## CHAPTER NO. 27

[HB 48]

AN ACT AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ESTABLISH THE NATIONAL GUARD EDUCATION BENEFIT PROGRAM; EXTENDING THE TERMINATION DATE FOR TUITION WAIVERS FOR A QUALIFIED MEMBER OF THE MONTANA NATIONAL GUARD; AMENDING SECTION 20-25-421, MCA, AND SECTION 5, CHAPTER 577, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-25-421, MCA, is amended to read:

**“20-25-421. (Temporary) Charges for tuition — waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

- (i) a paid or volunteer member of a municipal or rural fire department;
- (ii) a law enforcement officer as defined in 7-32-201; or
- (iii) a full-time highway patrol officer.

(e) waive tuition for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program established by, *which* the department of military affairs *is authorized to establish*. The waivers provided for in this subsection (2)(e) are intended to be available for up to 5 years after the person qualifies. (Terminates June 30, 2009—sec. 5, Ch. 577, L. 2005 2011.)

**20-25-421. (Effective July 1, 2009 2011) Charges for tuition — waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

- (i) a paid or volunteer member of a municipal or rural fire department;
- (ii) a law enforcement officer as defined in 7-32-201; or
- (iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year [in accordance with the *Montana* national guard education benefit program provided for in 10-1-121], *which the department of military affairs is authorized to establish.*"

**Section 2.** Section 5, Chapter 577, Laws of 2005, is amended to read:

**"Section 5. Termination.** [This act] terminates June 30, ~~2009~~ 2011."

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

Approved March 22, 2007

## CHAPTER NO. 28

[HB 76]

AN ACT REVISING AND CLARIFYING PROCEDURES FOR PROCESSING OF HUMAN RIGHTS COMPLAINTS; ADDING THE DEPARTMENT OF LABOR AND INDUSTRY AS A PARTY OF INTEREST IN TEMPORARY INJUNCTION PROVISIONS AND IN PROVISIONS FOR ENFORCEMENT PETITIONS FOR ORDERS AND CONCILIATION AGREEMENTS; CLARIFYING THE FUNCTION OF INFORMAL INVESTIGATION PROCESS; CLARIFYING PROCEDURES INCLUDING PROCEDURES FOR FILING COMPLAINTS, DEPARTMENT PROCESSES FOLLOWING INFORMAL INVESTIGATIONS BY THE DEPARTMENT, FILING OF OBJECTIONS, AND HEARING PROCEDURES AND RESPONSIBILITIES; CLARIFYING PROCEDURES UPON A FINDING OF DISCRIMINATION AND IN APPEALS; REVISING AND CLARIFYING PROCEDURES FOR THE REVIEW OF DEPARTMENT ACTION BY THE HUMAN RIGHTS COMMISSION; REVISING AND CLARIFYING PROCEDURES FOR CONCLUSION OF A COMPLAINT; REVISING AND CLARIFYING PROCEDURES AND REMEDIES IN HOUSING DISCRIMINATION COMPLAINTS; AMENDING SECTIONS 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-507 AND 49-2-509, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 49-2-501, MCA, is amended to read:



**“49-2-501. Filing complaints.** (1) ~~A complaint may be filed with the department by any party~~ *A person* claiming to be aggrieved by any discriminatory practice prohibited by this chapter *may file a complaint with the department.*

(2) ~~A complaint may be filed on behalf of a party claiming to be aggrieved by a discriminatory practice~~ *person charging unlawful discrimination* prohibited by this chapter if the person acting on behalf of the ~~aggrieved~~ *charging* party is the ~~aggrieved~~ *charging* party’s guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

(3) The complaint must be ~~in the form of a written, and verified complaint stating and must state~~ the name and address of the party, ~~educational institution, financial institution, or governmental entity or agency~~ alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(4) (a) Except as provided in 49-2-510 and subsection (4)(b) of this section, a complaint under this chapter must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the ~~complainant~~ *charging party* has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

~~(c) Any complaint not filed within the times set forth in this section may not be considered by the commission or the department.~~

(5) *If the department determines that the complaint is untimely, it shall dismiss the complaint on a finding of no reasonable cause. A charging party may file objections to the dismissal with the commission pursuant to [section 6].”*

**Section 2.** Section 49-2-503, MCA, is amended to read:

**“49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this chapter, a district court may, upon the application of the commissioner, *the department*, or the ~~complainant~~ *charging party*, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.”

**Section 3.** Section 49-2-504, MCA, is amended to read:

**“49-2-504. Informal investigation and — conciliation — findings.** (1) ~~(a)~~ The department shall informally investigate the matters set out in the complaint promptly and impartially. ~~If the department determines that to determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence, it.~~

(2) *(a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.*

*(b) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to achieve a resolution of resolve the complaint by conference, conciliation, and persuasion in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, identified found in the investigation.*

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

~~(b)(4) If a complaint is filed relative to an employment-related complaint and if the commissioner decides the department determines that the inclusion of documents or information contained in the complaint obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information contained in the complaint. The written summary must include sufficient information to give maximum effect to the intent of this chapter.~~

~~(2)(5) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.~~

~~(3)(6) The department shall commence proceedings within 30 days after receipt of a complaint.~~

~~(4)(7) (a) The After the informal investigation, the department shall make issue a finding regarding the merit or nonmerit of the complaint on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued within 180 days after a complaint is filed, except that the department shall make issue the finding within 120 days after a complaint is filed under 49-2-305.~~

*(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:*

*(i) continue the administrative process by filing objections with the commission as provided in [section 6]; or*

*(ii) discontinue the administrative process and commence proceedings in district court as provided in [section 6].*

*(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505."*

**Section 4.** Section 49-2-505, MCA, is amended to read:

**“49-2-505. Contested case hearing — appeal to commission — final agency decision.** (1) ~~If the informal efforts to eliminate the alleged discrimination are unsuccessful, the~~ *The department shall hold a contested case hearing on the a complaint that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court.* The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) ~~(a) If the parties mutually agree to permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds extend the time for hearing beyond 12 months after the complaint was is filed, then the parties shall stipulate to a schedule for proceedings to be established by the department.~~

~~(b) The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case in accordance with the stipulated schedule.~~

~~(c) The case must be heard no later than 90 days after the date is set by the department. The After a hearing date is set, the department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.~~

(3) (a) The hearing must be held by the department in the county where the unlawful conduct is alleged to have occurred unless a party ~~charged in the complaint~~ requests and is granted a change of venue for good cause shown. The case in support of the complaint may be presented before the department by the ~~complainant~~ *charging party* or an attorney representing the ~~complainant~~ *charging party*. The hearing ~~and any subsequent proceedings under this chapter~~ must be held in accordance with the applicable portions of the Montana Rules of Civil Procedure ~~as adopted by the department~~.

(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.

~~(c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a hearing, the hearings officer shall issue a decision. If the decision is not appealed to the commission within 14 days as provided in subsection (4), the decision becomes final and is not appealable to district court.~~

~~(4) A party may appeal a decision of the hearings officer to the commission. A party shall provide notice of its by filing an appeal to with the commission, the department, and all parties within 10 business 14 days of receipt after the issuance of the notice of decision of the administrative hearing.~~

(5) The commission shall hear all appeals within 120 days of receipt of notice ~~of an appeal~~. *The commission may affirm, reject, or modify the decision in whole or in part.* The commission shall render a *final agency decision* within 90 days of hearing the appeal.

~~(5)(6) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.~~

~~(6)(7) The department or the commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.~~

(7)(8) The prevailing party in a hearing under this section may bring an action in district court for attorney fees *and costs*. The court in its discretion may allow the prevailing party reasonable attorney fees *and costs*. An action under this section must comply with the Montana Rules of Civil Procedure.

(9) *Within 30 days after the commission issues a final agency decision in writing under subsection (5), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-702.*

**Section 5.** Section 49-2-506, MCA, is amended to read:

**“49-2-506. Procedure upon a decision finding of discrimination.** (1) ~~If the commission or the department, after a hearing, hearings officer~~ finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, ~~the commission or the department~~ shall order the party to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused’s future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of punitive damages.

(3) ~~Whenever a commission or department~~ *an order or conciliation agreement requires inspection by the department for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 1 year.*”

**Section 6. Dismissal after informal proceedings — filing of objections — procedures — action in district court.** (1) If the department, after the informal investigation, issues a notice of dismissal under 49-2-501(5) or 49-2-504(7)(b), a charging party may file objections to the dismissal with the commission. The objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.

(2) (a) The commission shall consider the objection in an informal hearing and review the department’s findings for an abuse of discretion.

(b) If the commission overrules the objection, it shall issue its order affirming the department’s notice of dismissal.

(c) If the commission sustains the objection, it shall reopen the case by remanding it to the department.

(3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department’s notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence the civil action in the district court within 90 days after the final agency decision has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

(b) Within 30 days after the commission issues an order affirming the department's notice of dismissal pursuant to subsection (2)(b), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-604.

**Section 7.** Section 49-2-508, MCA, is amended to read:

**“49-2-508. Enforcement of commission or department order or conciliation agreement.** If the order issued under 49-2-506 is not obeyed, the commissioner, *the department*, or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's or department's order by any appropriate order. The commissioner, *the department*, or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement.”

**Section 8. Filing in district court — compliance with administrative procedures required.** (1) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.

(2) In addition to dismissal under 49-2-501(5) or 49-2-504(7)(b), the department shall dismiss a complaint if:

(a) the charging party fails to keep the department advised of changes of address and the department finds that the failure has impeded the administrative proceedings; or

(b) a period of 12 months has elapsed from the filing of a complaint and neither the department nor the commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to [section 6]. However, the department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if:

(i) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

(ii) the parties have stipulated to a reasonable extension of the timeframes; or

(iii) through litigation a party has unsuccessfully sought to prevent the department or the commission from conducting administrative proceedings on the complaint.

(3) Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

**Section 9.** Section 49-2-510, MCA, is amended to read:

**“49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A complaint may be filed with the department by or

on behalf of a ~~party~~ *person* claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be ~~in written form, and~~ verified by the aggrieved ~~party, person~~ and must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) ~~If the department, on appeal, or the commission,~~ in a hearing under 49-2-505, ~~the department~~ finds that a ~~party~~ *person* against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the department ~~or the commission~~ may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(a) in an amount not exceeding \$10,000 if the respondent has not been adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

(b) in an amount not exceeding \$25,000 if the respondent has been adjudged in any prior judicial or formal administrative proceedings to have committed one or more similar discriminatory housing practices in repeated violation of a ~~subsection of 49-2-305~~ during the 5-year period ending on the date of the filing of the written complaint.

(3) In the case of ~~an order~~ *a decision* with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the ~~commission~~ *department* shall, no later than 30 days after the date of the issuance of the order ~~or, if the order is judicially reviewed, no later than 30 days after the order is affirmed~~ send copies of the findings of fact, the conclusions of law, and the order ~~send a copy of the decision~~ to the licensing or regulatory agency.

(4) (a) ~~When~~ *Following completion of the informal investigation of a* complaint is filed under 49-2-305, a ~~complainant~~ *charging party* or a respondent may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made *in writing* no later than ~~20~~ 30 days after receipt by the electing person of service ~~the service of notice of certification for hearing under 49-2-505 on the electing party.~~ The ~~person making the election shall~~ *must* give notice to the department and to all ~~complainants and other respondents~~ *parties* named in the complaint. Within 30 days after the election is made, the ~~complainant~~ *charging party*, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the ~~complainant~~ *charging party* may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.

(b) The department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a). *The charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to issues to be determined in a civil action brought by the department may intervene in the action.*

(5) (a) An aggrieved party may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved party may commence a civil action under this subsection (5) for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the department, except as provided in subsection (5)(d). If the department has obtained a conciliation agreement with the consent of the aggrieved party, an action may not be filed under this subsection (5) by the aggrieved party regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission or the department may not continue administrative proceedings on a complaint after the filing of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved party may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission or the department has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant and the respondent; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the party is financially unable to bear the costs of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.

(6) If the court finds that a party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, consistent with the provisions of subsection (2) of this section, award punitive damages. The court may also award attorney fees and costs to the substantively prevailing party.

(7) ~~(a) Except as provided in subsection (7)(b), all All civil damages and administrative penalties and other revenue generated under this part, monetary or otherwise, awarded under this section to an organization that is not an aggrieved party must be deposited in the state general fund.~~

~~(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party."~~

**Section 10. Repealer.** Sections 49-2-507 and 49-2-509, MCA, are repealed.

**Section 11. Codification instruction.** [Sections 6 and 8] are intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [sections 6 and 8].

**Section 12. Effective date.** [This act] is effective July 1, 2007.

Approved March 22, 2007

## CHAPTER NO. 29

[HB 82]

AN ACT REVISING THE ELEMENTS OF THE CRIME OF POSSESSION OF CHILD PORNOGRAPHY; PROVIDING DEFINITIONS; AMENDING SECTIONS 45-5-625 AND 50-19-501, MCA; AND REPEALING SECTION 45-5-620, MCA.

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

**Section 1.** Section 45-5-625, MCA, is amended to read:

**“45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.



(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.

(4) *As used in this section, the following definitions apply:*

(a) *“Electronic communication” means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.*

(b) *“Sexual conduct” means:*

(i) *actual or simulated:*

(A) *sexual intercourse, whether between persons of the same or opposite sex;*

(B) *penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;*

(C) *bestiality;*

(D) *masturbation;*

(E) *sadomasochistic abuse;*

(F) *lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or*

(G) *defecation or urination for the purpose of the sexual stimulation of the viewer; or*

(ii) *depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person’s own sexual response or desire or the sexual response or desire of any person.*

(c) *“Simulated” means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.*

(d) *“Visual medium” means:*

(i) *any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or*

(ii) *any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.”*

**Section 2.** Section 50-19-501, MCA, is amended to read:

**“50-19-501. Nursing mother and infant protection.** (1) The Montana legislature finds that breastfeeding a baby is an important and basic act of nurturing that must be protected in the interests of maternal and child health and family values. A mother has a right to breastfeed the mother’s child in any location, public or private, where the mother and child are otherwise authorized

to be present, irrespective of whether or not the mother's breast is covered during or incidental to the breastfeeding.

(2) A unit of local government may not prohibit breastfeeding in public by local ordinance.

(3) The act of breastfeeding may not be considered:

(a) a nuisance as provided in Title 27, chapter 30;

(b) indecent exposure as provided for in 45-5-504;

(c) sexual conduct as defined in ~~45-5-620(1)(f)~~ 45-5-625; or

(d) obscenity as provided for in 45-8-201."

**Section 3. Repealer.** Section 45-5-620, MCA, is repealed.

Approved March 22, 2007

## CHAPTER NO. 30

[HB 106]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF COMMERCE ACT AS AN OMBUDSMAN FOR THE TOURISM INDUSTRY AND RECREATIONISTS IN ALL MATTERS CONCERNING THE MANAGEMENT AND REGULATION OF THE LEVEL OF FLATHEAD LAKE; AMENDING SECTION 90-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 90-1-104, MCA, is amended to read:

**"90-1-104. Functions of department of commerce — recreational development.** The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development ~~which that~~ is directly related to private investment in recreational facilities;

(2) assemble and correlate information ~~which that~~ may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; *and*

~~(3) serve as an ombudsman for the tourism industry and recreationists in all matters concerning the management and regulation of the level of Flathead Lake; and~~

(4)(3) coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the coordinator of Indian affairs."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

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

Approved March 22, 2007

## CHAPTER NO. 31

[HB 137]

AN ACT REVISING CONDITIONS UNDER THE MICROBUSINESS DEVELOPMENT ACT TO INCREASE ACCESS TO DEVELOPMENT LOANS; REVISING THE DEFINITION OF “QUALIFIED MICROBUSINESS”; AMENDING SECTIONS 17-6-402, 17-6-403, AND 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 17-6-402, MCA, is amended to read:

**“17-6-402. Legislative findings and purpose.** (1) The legislature finds and declares that:

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people;

(b) no program exists by which the state encourages and assists in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than \$500,000 \$1 million a year, which represent a significant component of and potential for growth in the state’s economy; and

(c) neither the public sector nor the private sector currently satisfies the financial needs of these businesses.

(2) The purpose of this part is to create a program to encourage and assist in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than \$500,000 \$1 million a year.

(3) The process of certification of microbusiness development corporations and selection among competing proposals for development loans must be open and competitive and allow access to the competition to all interested communities and organizations and must provide for selecting for award of development loans those projects that are best qualified according to the criteria established under 17-6-406 through 17-6-408.”

**Section 2.** Section 17-6-403, MCA, is amended to read:

**“17-6-403. Definitions.** As used in this part, the following definitions apply:

(1) “Certified microbusiness development corporation” means a microbusiness development corporation certified pursuant to 17-6-408.

(2) “Department” means the department of commerce provided for in 2-15-1801.

(3) “Development loan” means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(4) “Microbusiness development corporation” means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(5) “Microbusiness loan” means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(6) “Program” means the microbusiness finance program established in 17-6-406.

(7) “Qualified microbusiness” means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenue of less than \$500,000 \$1 million; or

(b) produces energy using an alternative renewable energy source as defined in 15-6-225.

(8) “Revolving loan fund” means a fund required to be established by a certified microbusiness development corporation that receives a development loan.”

**Section 3.** Section 17-6-407, MCA, is amended to read:

**“17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations.** (1) (a) There is in the state special revenue fund a microbusiness development loan account into which funds allocated for that purpose and money received in repayment of the principal of development loans must be deposited.

(b) The department may make development loans from the account to a certified microbusiness development corporation.

(c) Interest earned on the account must be deposited in the microbusiness finance program administrative account established in subsection (2).

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations;

(c) grants, donations, and private or public income; and

(d) all interest earned on money in the account and interest earned on money in the account provided for in subsection (1)(a).

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with a plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with a plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(6) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed ~~\$35,000~~ *\$100,000* and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed ~~\$35,000~~ *\$100,000*;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed ~~\$35,000~~ *\$100,000*, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed ~~\$35,000~~ *\$100,000*.

(7) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio

of at least \$1 from other sources for each \$6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department and that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. (Bracketed language terminates June 30, 2009—secs. 3, 4, Ch. 460, L. 2005.)”

**Section 4. Effective date.** [This act] is effective July 1, 2007.

Approved March 22, 2007

## CHAPTER NO. 32

[HB 156]

AN ACT GENERALLY REVISING LONG-TERM CARE INSURANCE LAWS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO NONFORFEITURE BENEFITS; EXPANDING RULEMAKING AUTHORITY FOR THE COMMISSIONER OF INSURANCE; REVISING PROVISIONS RELATING TO DELIVERY OF POLICY SUMMARIES; REVISING PROVISIONS RELATING TO BENEFIT TRIGGERS; PROVIDING ADDITIONAL STANDARDS FOR LONG-TERM CARE INSURANCE CONTRACTS; REQUIRING TRAINING FOR INSURANCE PRODUCERS IN THE LONG-TERM CARE FIELD; PROVIDING PENALTIES; AMENDING SECTIONS 33-20-127, 33-20-128, 33-22-1107, 33-22-1111, 33-22-1115, 33-22-1116, 33-22-1119, 33-22-1121, 33-22-1123, 33-22-1124, AND 33-22-1125, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 33-20-127, MCA, is amended to read:

**“33-20-127. Life insurance policy with long-term care provision or accelerated benefits provision — summary required.** At the time of policy delivery, a summary must be delivered to the insured for an individual life insurance policy that provides ~~long-term care benefits or~~ accelerated benefits within the policy or by rider. *An individual life insurance policy that provides long-term care benefits must provide a summary as described in 33-22-1123.* In the case of direct response solicitations, the insurer shall deliver the summary upon the applicant's request but ~~no~~ not later than the time of policy delivery. In

addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits or accelerated benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations of long-term care benefits and accelerated benefits; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits.”

**Section 2.** Section 33-20-128, MCA, is amended to read:

**“33-20-128. Life insurance policy paying long-term benefits — monthly report.** When a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report must be provided to the policyholder *as provided for in 33-22-1123 and this section*. The report must include the following information for the month for which the report is issued:

(1) the amount of long-term care benefits paid out during the month;

(2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and

(3) the amount of long-term care benefits existing or remaining.”

**Section 3. Scope.** This part is not intended to supersede the obligations of entities subject to this part to comply with the substance of other applicable insurance laws insofar as they do not conflict with this part. However, laws and regulations designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance.

**Section 4.** Section 33-22-1107, MCA, is amended to read:

**“33-22-1107. Definitions.** As used in this part, the following definitions apply:

(1) “Activities of daily living” means:

(a) eating;

(b) toileting;

(c) transferring;

(d) bathing;

(e) dressing; and

(f) continence.

(2) “Applicant” means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(3) "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any insurance premium involved in the policy, the income of the applicant, and the savings and investments of the applicant.

(4) "Certificate" means a certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

(5) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

- (a) (i) ~~an employer~~ *one or more employers*;
- (ii) a labor organization;
- (iii) a trust established by an employer or labor organization; or
- (iv) a trustee of a fund established by ~~an employer or labor organization~~ *one or more employers or labor organizations* or a combination of employers and labor organizations for:

(A) employees or former employees or a combination of employees and former employees; or

(B) members or former members of the labor organization or a combination of members and former members;

(b) a *any* professional, trade, or occupational association for its current, former, or retired members or a combination of current, former, and retired members if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association ~~is~~ *must be* considered as ~~having to~~ *have* satisfied the organizational requirements unless the commissioner finds



after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections (5)(a) through (5)(c) if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

(6) (a) "Long-term care insurance":

(i) means a *any insurance* policy or certificate that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a *each* covered person, on an expense-incurred, indemnity, prepaid, or other basis, for a *one or more* necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, or maintenance or personal-care ~~service~~ *services* provided in a setting other than an acute care unit of a hospital;

(ii) may be issued by an insurer, fraternal benefit society, *nonprofit* health service corporation, prepaid health plan, health maintenance organization, or similar organization to the extent that ~~it~~ *the organization* is otherwise authorized to issue life or health insurance;

(iii) includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance;

(iv) includes any product advertised, marketed, or offered as long-term care insurance regardless of any exceptions to the definition included in this section;

(v) includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity; and

(vi) includes qualified long-term care insurance contracts.

(b) Long-term care insurance does not include:

(i) ~~an~~ *any* insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or *related asset* protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage; or

(ii) life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(c) An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this

part unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

(7) “Policy” means a *any* policy, *certificate*, contract, membership contract, *subscriber agreement*, health care services agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(8) “Preexisting condition” means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

(9) “Qualified long-term care insurance contract” or “*federally tax-qualified long-term care insurance contract*” means:

(a) an individual or group insurance contract that meets the requirement of section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B, if:

(i) the only insurance protection provided under the contract is coverage of qualified long-term care services, *as defined in [section 13]. A contract may also satisfy the requirements of this subsection (9)(a) if payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.*

(ii) the contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 or would be reimbursable but for the application of a deductible or coinsurance amount, *The requirements of this subsection (9)(a) do not apply to expenses that are reimbursable under 42 U.S.C. 1395 only as a secondary payor. A contract may also satisfy the requirements of this subsection (9)(a) if payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.*

(iii) the contract is guaranteed renewable *within the meaning of section 7702B(b)(1)(C) of the Internal Revenue Code, 26 U.S.C. 7702B(b)(1)(C);*

(iv) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits. However, a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract.

(v) the contract contains the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code, 26 U.S.C. 7702B(g); or

(b) a life insurance contract that provides long-term care coverage by rider or as a part of the contract as long as the contract complies with section 7702B(b) and (e) of the Internal Revenue Code, 26 U.S.C. 7702B(b) and (e).

~~(10) (a) “Qualified long-term care services” means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

~~(b) For the purposes of this subsection (10), “licensed health care practitioner” means any of the following individuals when licensed in this state:~~

~~(i) a physician, as defined in 42 U.S.C. 1395x(r)(1);~~

~~(ii) a registered professional nurse;~~

~~(iii) a licensed social worker; or~~

~~(iv) another individual as determined by rules of the commissioner adopted for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.~~

~~(11)(10) “Transferring” means moving into or out of a bed, chair, or wheelchair.”~~

**Section 5.** Section 33-22-1111, MCA, is amended to read:

**“33-22-1111. Outline of coverage.** (1) (a) An insurer shall deliver an outline of coverage as approved by the commissioner to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(b) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

(c) In the case of insurance producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(d) In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the earlier of the applicant’s request or the delivery of the policy.

(2) The outline of coverage must include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of a group policy must be specifically described.

(d) a statement that the outline of coverage is only a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) a description of the terms under which the policy or certificate may be returned and the premium refunded; ~~and~~

(f) a brief description of the relationship of cost of care and benefits; *and*

*(g) a statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract.*

(3) The outline of coverage:

(a) must prominently display the name of the insurer;

(b) must be a freestanding document not dependent for purposes of reader comprehension upon any other document;

(c) must use no smaller than 12-point type; and

(d) may not contain material of an advertising nature.”

**Section 6.** Section 33-22-1115, MCA, is amended to read:

**“33-22-1115. Prior hospitalization or institutionalization.** (1) A long-term care insurance policy may not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

(a) on a prior hospitalization requirement;

(b) provided in an institutional care setting on the receipt of a higher level of institutional care; or

(c) other than waiver of premium, postconfinement benefits, postacute care benefits, or recuperative benefits, on a prior institutionalization requirement.

(2) A long-term care insurance policy containing a limitation or condition for eligibility other than those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate entitled “Limitations or Conditions on Eligibility for Benefits”, the limitations or conditions, including the any required number of days of confinement.

(3) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

(4) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days for which benefits are paid.

(5) A long-term care insurance policy that provides a benefit benefits only following institutionalization may not condition the benefit benefits upon admission to a facility for the same or a related condition within a period of less than 30 days after discharge from the institution.”

**Section 7.** Section 33-22-1116, MCA, is amended to read:

**“33-22-1116. Nonforfeiture benefits — availability offer requirement.** ~~An insurance company offering~~ (1) *Except as provided in subsection (3), a long-term care insurance policy or certificate shall offer to each prospective purchaser the choice between a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate holder and one that does not include nonforfeiture benefits may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.*

(2) *If a policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that must be available for a specified period of time following a substantial increase in premium rates.*

(3) *When a group long-term care insurance policy is issued, the offer required in subsection (1) must be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in 33-22-1107(5)(d), other than to a continuing care retirement community or other similar entity, the offer must be made to each proposed certificate holder.”*

**Section 8.** Section 33-22-1119, MCA, is amended to read:

**“33-22-1119. Right to return policy — free look — refunds upon denial of application.** (1) ~~A person insured under an individual long-term care insurance policy has~~ *A long-term care insurance applicant and insured has* the right to return the policy within 30 days of ~~its~~ *the policy's* delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, the ~~applicant or insured~~ *applicant or insured* is not satisfied for any reason. ~~An individual~~ *A long-term care insurance policy* must have a notice prominently printed on the first page of the policy or attached to ~~it~~ *the policy* stating that the ~~applicant or insured~~ *applicant or insured* has the right to return the policy within 30 days of ~~its~~ *the policy's* delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, ~~other than a certificate issued to a group defined in 33-22-1107(5)(a),~~ *the applicant or insured* is not satisfied for any reason.

(2) ~~A~~ *An applicant or a person* insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy or ~~certificate~~ within 30 days of its delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, the ~~applicant or the insured~~ *applicant or the insured* is not satisfied for any reason. A long-term care insurance policy or ~~certificate~~ issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to it stating that the ~~applicant or the insured~~ *applicant or the insured* has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, the ~~applicant or the insured~~ *applicant or the insured* is not satisfied for any reason.

(3) *If the application of a person for long-term care insurance is denied, any refund due the person must be refunded within 30 days of the denial or return of the application.”*

**Section 9.** Section 33-22-1121, MCA, is amended to read:

**“33-22-1121. Rules.** The commissioner may adopt rules necessary to implement this part, including but not limited to rules that:

- (1) establish loss ratio standards for long-term care insurance policies;
- (2) *promote premium adequacy and protect the policyholder in the event of substantial rate increases;*
- (3) *establish minimum standards for insurance producer training, marketing practices, compensation, and testing;*
- (4) *establish penalties and reporting practices for long-term care insurance;*
- (2)(5) ~~specify the requirements for offering the sale of a policy with nonforfeiture benefits and,~~ *with respect to nonforfeiture benefits and contingent benefits:*
  - (a) *the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies;*
  - (b) *the standards for nonforfeiture benefits;*
  - (c) *the rules regarding contingent benefits upon lapse, including:*
    - (i) *a determination of the specified period of time during which a contingent benefit upon lapse will be available;*
    - (ii) *the substantial premium rate increase that triggers a contingent benefit upon lapse as described in 33-22-1116; and*

(d) the types of appropriate sale criteria to be communicated at the time of application;

(3)(6) establish a requirement for the mandatory triggering of policy benefits based upon the number of activities of daily living that an individual is capable or incapable of performing; and

(4)(7) are necessary to implement a determination made by the secretary of health and human services pursuant to ~~Public Law 104-191~~ *45 CFR, parts 160 and 164*, as to who is a licensed health care practitioner.”

**Section 10.** Section 33-22-1123, MCA, is amended to read:

**“33-22-1123. Delivery of policy or certificate — policy summary — monthly reports.** (1) ~~If an application for a long-term care insurance policy or a certificate meeting the requirements of Public Law 104-191 is approved, the health insurance issuer of the policy or certificate shall deliver the policy or certificate to the applicant, or policyholder, or certificate holder not later than 30 days after the date of issue approval.~~

(2) (a) *At the time of delivery of an individual life insurance policy that provides long-term care benefits within the policy or by rider, a policy summary must be provided to the insured.*

(b) *In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant’s request, and whether or not a request is made, a policy summary must be delivered not later than at the time the policy is delivered.*

(c) *In addition to complying with any other applicable requirements, the summary must include:*

(i) *an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;*

(ii) *an illustration of the amount of benefit, the length of benefit, and the guaranteed lifetime benefit, if any, for each covered person;*

(iii) *any exclusions, reductions, and limitations on benefits of long-term care;*

(iv) *a statement that any long-term care inflation protection option required by the Administrative Rules of Montana is or is not available under this policy;*

(d) *If applicable to the policy type, the summary must also include:*

(i) *a disclosure of the effects of other exercising rights under the policy;*

(ii) *a disclosure of guarantees related to long-term care costs of insurance charges; and*

(iii) *current and projected maximum lifetime benefits.*

(3) *The required provisions of the policy summary may be incorporated into a basic illustration required to be delivered in accordance with administrative rules or into the life insurance policy summary.*

(4) *Any time a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefits is in benefit payment status, a monthly report must be provided to the policyholder. The report must include:*

(a) *any long-term care benefits paid out during the month;*

(b) *an explanation of any changes in the policy, such as to death benefits or cash values, due to long-term care benefits being paid out; and*

(c) *the amount of long-term care benefits existing or remaining.”*

**Section 11.** Section 33-22-1124, MCA, is amended to read:

**“33-22-1124. Denial of claims.** If a claim under a long-term care insurance policy or certificate meeting the requirements of Public Law 104-191 is denied, the health insurance issuer shall, not later than 60 days after the receipt of the date of a written request by the policy holder *policyholder*, certificate holder, or the representative of either of them:

- (1) provide a written explanation of the reasons for the denial; and
- (2) provide all information possessed by the health insurance issuer relating to the denial.”

**Section 12.** Section 33-22-1125, MCA, is amended to read:

**“33-22-1125. Benefit triggers.** (1) A long-term care insurance policy or certificate may not be delivered or issued for delivery in this state unless it complies with the requirements of *this section and applicable rules*,—as established by rules of the commissioner, for the triggering of mandatory provision of benefits.

(2) (a) A qualified long-term care insurance contract *policy* must condition the payment of benefits on a determination of the insured’s inability to perform activities of daily living *or on cognitive impairment*. ~~for an expectation of at least 90 days because of a loss of level of disability described under regulations adopted by the U.S. secretary of the treasury and because of:~~

~~(a) a loss of functional capacity requiring the substantial assistance of another person to perform the prescribed activities of daily living; or~~

~~(b) a severe cognitive impairment requiring substantial supervision, including verbal cueing, by another person to protect the insured from harming the insured or others for from threats to the insured’s health or safety.~~

~~(3) An insured meets a condition of payment if, within the preceding 12-month period, a licensed health care practitioner has certified that the insured has met the requirements and the practitioner has prescribed the qualified long-term care insurance services pursuant to a plan of care.~~

~~(b) Eligibility for the payment of benefits may not be more restrictive than requiring a deficiency in the ability to perform not more than three of the activities of daily living *or requiring the presence of cognitive impairment*.~~

~~(c) Insurers may use activities of daily living to trigger covered benefits that are in addition to those contained in the definition under 33-22-1107 or rules as long as they are defined in the policy.~~

~~(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy. However, the provisions may not restrict or be in lieu of the requirements contained in subsections (1) and (2).~~

~~(4) For purposes of this section, the determination of a deficiency may not be more restrictive than:~~

~~(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or~~

~~(b) if the deficiency is due to the presence of a cognitive impairment, the need for supervision or verbal cueing by another person in order to protect the insured or others.~~

*(5) Assessments of activities of daily living and cognitive impairment must be performed by licensed or certified professionals, such as physicians, nurses, or social workers.*

*(6) Long-term care insurance policies must include a clear description of the process of appealing and resolving benefit determinations.”*

**Section 13. Additional standards for qualified long-term care contracts — definitions.** (1) For the purposes of this section, the following definitions apply:

(a) (i) “Chronically ill individual” has the meaning provided by section 7702B(c)(2) of the Internal Revenue Code, 26 U.S.C. 7702B(c)(2), and means any individual who has been certified by a licensed health care practitioner as:

(A) being unable to perform without substantial assistance from another individual at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term may not include an individual otherwise meeting the requirements of subsections (1)(a)(i) (A) or (1)(a)(i)(B) unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets the requirements of subsections (1)(a)(i)(A) or (1)(a)(i)(B).

(b) “Licensed health care practitioner” means a physician, as defined in section 1861(r)(1) of the Social Security Act, 42 U.S.C. 1395x(r)(1), a registered professional nurse, licensed social worker, or other individual who meets the requirements prescribed by the secretary of the treasury.

(c) “Maintenance or personal care services” means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(d) “Qualified long-term care services” means services that meet the requirements of section 7702(c)(1) of the Internal Revenue Code, 26 U.S.C. 7702(c)(1), and that:

(i) provide necessary diagnostic, preventative, therapeutic, curative, treatment, mitigation, and rehabilitative services;

(ii) provide maintenance or personal care services that are required by a chronically ill individual; and

(iii) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract must condition the payment of benefits on a certification of the insured’s inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (2) must be performed by the following licensed or certified professionals:

(a) physicians or registered professional nurses;

(b) licensed social workers; or



(c) other individuals who meet the requirements prescribed by the secretary of the treasury.

(4) Certifications required pursuant to subsection (2) may be performed by a licensed health care professional at the direction of the insurer as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(5) Qualified long-term care insurance contracts must include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

**Section 14. Incontestability period.** (1) Upon a showing of misrepresentation that is material to the acceptance for coverage, a policy that has been in force for less than 6 months may be rescinded by the insurer or the insurer may deny an otherwise valid long-term care insurance claim.

(2) Upon a showing of misrepresentation that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought, a policy that has been in force for at least 6 months but less than 2 years may be rescinded by the insurer or the insurer may deny an otherwise valid long-term care insurance claim.

(3) After a policy has been in force for 2 years, it is not contestable upon the grounds of misrepresentation alone. The policy may only be contested upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(4) (a) A long-term care insurance policy may be field-issued if the compensation to the field issuer is not based on the number of policies sold.

(b) For purposes of this subsection (A), "field-issued" means a policy issued by a producer or a third-party administrator pursuant to the underwriting authority granted to the producer or third-party administrator by an insurer and using the insurer's underwriting guidelines.

(5) If an insurer has paid benefits under the long-term care insurance policy, the benefit payments may not be recovered by the insurer if the policy is rescinded.

(6) In the event of the death of the insured, this section may not be applied to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In that situation, the remaining death benefits under the policy must be governed by Title 33, chapter 20. In all other situations, this section applies to life insurance policies that accelerate benefits for long-term care.

**Section 15. Insurance producer training requirements.** (1) An individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for disability or life insurance, has completed a one-time training course on or before July 1, 2008, and completes ongoing training within every 24-month period following July 1, 2008.

(2) The training requirements of this section may be approved as continuing education courses under Title 33, chapter 17, part 12.

(3) The one-time training course required by this section may not be less than 8 hours, and the ongoing training required by this section may not be less than 4 hours for each 24-month period.

(4) (a) The training must consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term care insurance partnership programs.

(b) The training must address but is not limited to:

(i) state and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(ii) available long-term care services and providers;

(iii) changes or improvements in long-term care services or providers;

(iv) alternatives to the purchase of private long-term care insurance;

(v) the effect of inflation on benefits and the importance of inflation protection; and

(vi) consumer suitability standards and guidelines.

(5) The training required by this section may not include training that is specific to the insurer or a company product or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

(6) (a) An insurer subject to this section shall obtain verification that an insurance producer acting on the insurer's behalf receives the training required by this section before the insurance producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products.

(b) The insurer shall maintain records subject to this state's record retention requirements and make the verification of the insurance producer's compliance with training requirements available to the commissioner upon request.

(7) (a) An insurer subject to this section shall maintain records with respect to the training of its insurance producers concerning the distribution of its policies that will allow the commissioner to provide assurance to the department of public health and human services that insurance producers have received the required training and that the insurance producers have demonstrated an understanding of the insurer's policies and the relationship of the policies to public and private coverage of long-term care, including medicaid, in this state.

(b) The records must be maintained in accordance with this state's record retention requirements and must be made available to the commissioner upon request.

(8) The satisfaction of the training requirements required by this section in any state must be considered to satisfy the training requirements in this state.

**Section 16. Penalties.** In addition to any other penalty provided for in Title 33, an insurer or an insurance producer found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of long-term care insurance is subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

**Section 17. Codification instruction.** [Sections 3 and 13 through 16] are intended to be codified as an integral part of Title 33, chapter 22, part 11, and the provisions of Title 33, chapter 22, part 11, apply to [sections 3 and 13 through 16].

**Section 18. Effective date.** [This act] is effective July 1, 2007.

Approved March 22, 2007

## CHAPTER NO. 33

[HB 158]

AN ACT GENERALLY REVISING FILING REQUIREMENTS FOR CORPORATIONS AND LIMITED LIABILITY COMPANIES; DEFINING "AUTHORIZED AGENT"; ALLOWING THE SECRETARY OF STATE TO CORRECT CERTAIN ERRORS ON DOCUMENTS CAUSED BY A FILING OFFICER; EXPANDING THE TYPE OF INSTRUMENTS THAT MAY BE FILED WITH THE SECRETARY OF STATE AS SURETY FOR SEISMIC EXPLORATION ACTIVITY; AND AMENDING SECTIONS 32-1-422, 35-1-113, 35-1-217, 35-1-1104, 35-1-1309, 35-2-119, 35-2-1109, 35-8-102, 35-8-208, 82-1-104, AND 82-1-107, MCA.

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

**Section 1.** Section 32-1-422, MCA, is amended to read:

**"32-1-422. Restriction on investment in corporate stock — rulemaking authority.** (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount;

(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

- (a) the federal national mortgage association;
- (b) the federal home loan mortgage corporation;
- (c) the federal agricultural mortgage corporation; and
- (d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113(9), that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

**Section 2.** Section 35-1-113, MCA, is amended to read:

**"35-1-113. Definitions.** As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "*Authorized agent*" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(~~2~~)(3) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(~~3~~)(4) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(~~4~~)(5) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(~~5~~)(6) "Deliver" includes mail.

(~~6~~)(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(~~7~~)(8) "Effective date of notice" means the date determined as provided in 35-1-116.

(~~8~~)(9) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

(9)(10) "Entity" includes:

- (a) a corporation and a foreign corporation;
- (b) a not-for-profit corporation;
- (c) a profit and a not-for-profit unincorporated association;
- (d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and
- (e) a state, the United States, or a foreign government.

(10)(11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11)(12) "Governmental subdivision" includes an authority, county, district, and city or town.

(12)(13) "Includes" denotes a partial definition.

(13)(14) "Individual" includes the estate of an incompetent or deceased individual.

(14)(15) "Means" denotes an exhaustive definition.

(15)(16) "Notice" means notice as provided in 35-1-116.

(16)(17) "Person" includes an individual and an entity.

(17)(18) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(18)(19) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(19)(20) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(20)(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(21)(22) "Share" means the unit into which the proprietary interests in a corporation are divided.

(22)(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(23)(24) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(24)(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25)(26) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(26)(27) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

**Section 3.** Section 35-1-217, MCA, is amended to read:

**"35-1-217. Filing requirements.** All of the following requirements must be met before a document is entitled to *may* be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) (a) *Except as provided in subsection (5)(b), the* The document must be executed:

(a)(i) by the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b)(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c)(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) *A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.*

(6) The person executing the document shall sign ~~it~~ *the document* and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, ~~and~~ or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under rules adopted pursuant to 35-1-1315.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

**Section 4.** Section 35-1-1104, MCA, is amended to read:

**"35-1-1104. Annual report for secretary of state.** (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report, *executed as provided in 35-1-217*, that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.”

**Section 5.** Section 35-1-1309, MCA, is amended to read:

**“35-1-1309. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file ~~it~~ *the document*.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document “Filed”, the secretary of state’s official title, and the date and time the document was received by the secretary of state for filing. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and all applicable fees have been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return ~~it~~ *the document* to the domestic or foreign corporation or the corporation’s representative within 10 *business* days after the document was delivered to the secretary of state, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state’s duty to file documents under this section is ministerial. The secretary of state’s filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or *in part*;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) *The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.*

**Section 6.** Section 35-2-119, MCA, is amended to read:

**“35-2-119. Filing requirements.** All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. ~~The~~ *The document* may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation.

(5) (a) *Except as provided in subsection (5)(b), the* ~~The~~ document must be executed:

~~(a)(i)~~ (i) by the presiding officer of the corporation’s board of directors, its president, or another of its officers;

~~(b)(ii)~~ (ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

~~(c)(iii)~~ (iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) *A corporation’s annual report may be executed as provided in subsection (5)(a) or by the corporation’s authorized agent.*

(ii) *For the purposes of this subsection (5)(b) “authorized agent” means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.*

(6) The person executing the document shall sign ~~it~~ *the document* and state beneath or opposite the signature the person’s name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.”



**Section 7.** Section 35-2-1109, MCA, is amended to read:

**“35-2-1109. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file ~~it~~ *the document*.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document “Filed”, the secretary of state’s official title, and the date and time the secretary of state received the document. Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and the fee has been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign corporation or its representative within 10 *business* days after the document was delivered to the secretary of state and include a brief written explanation of the reason for the refusal.

(4) The secretary of state’s duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) affect the validity or invalidity of the document in whole or in part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) *The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.”*

**Section 8.** Section 35-8-102, MCA, is amended to read:

**“35-8-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Articles of organization” means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) “At-will company” means a limited liability company other than a term company.

(3) *“Authorized agent” means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.*

(3)(4) “Business” includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(4)(5) “Corporation” means a corporation formed under the laws of this state or a foreign corporation.

(5)(6) “Court” includes every court having jurisdiction in the case.

(6)(7) “Debtor in bankruptcy” means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(7)(8) “Disqualified person” means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(8)(9) “Distribution” means a transfer of money, property, or other benefit to a member in that member’s capacity as a member of a limited liability company or to a transferee of a member’s distributional interest.

(9)(10) “Distributional interest” means all of a member’s interest in the distributions of a limited liability company.

(10)(11) “Event of dissociation” means an event that causes a person to cease to be a member.

(11)(12) “Foreign corporation” means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(12)(13) “Foreign limited liability company” means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(13)(14) “Foreign limited partnership” means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(14)(15) “Foreign professional limited liability company” means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(15)(16) “Licensing authority” means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(16)(17) “Limited liability company” or “domestic limited liability company” means an organization that is formed under this chapter.

(17)(18) “Limited partnership” means a limited partnership formed under the laws of this state or a foreign limited partnership.

(18)(19) “Manager” means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(19)(20) “Manager-managed company” means a limited liability company that is so designated in its articles of organization.

(20)(21) “Member” means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(21)(22) “Member-managed company” means a limited liability company other than a manager-managed company.

(22)(23) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(23)(24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(24)(25) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(25)(26) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(26)(27) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(27)(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28)(29) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(29)(30) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(30)(31) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

(31)(32) "Term company" means a limited liability company designated as a term company in its articles of organization."

**Section 9.** Section 35-8-208, MCA, is amended to read:

**"35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to ~~it~~ *the limited liability company* for correction.

(5) The annual report must be executed by at least one member of the limited liability company *or by the authorized agent* and ~~must include the street address of the member.~~

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.”

**Section 10.** Section 82-1-104, MCA, is amended to read:

**“82-1-104. Surety bond Indemnification of property owners — restoration of surface.** (1) Prior to performing ~~such~~ seismic activity, a person, firm, or corporation shall ~~also~~ file with the secretary of state a ~~good and sufficient~~ surety bond, *cash, certificate of deposit, or other instrument acceptable to the secretary of state* in the amount of \$10,000 for a single ~~such~~ seismic crew or a blanket surety bond, *cash, certificate of deposit, or other instrument acceptable to the secretary of state* in the amount of \$25,000 for all ~~such~~ seismic crews operating within the state for ~~such~~ *the* person, firm, or corporation, ~~which bond shall to~~ indemnify the owners of property within this state ~~against such physical~~ *for physical* damages to ~~such their~~ property ~~as may arise as the result of such~~ *resulting from any* seismic exploration. Partial or complete forfeiture of the ~~surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state~~ must be determined by the appropriate court of civil jurisdiction.

(2) ~~Unless otherwise agreed as between~~ the owner of the surface *rights* and ~~such the~~ person, firm, or corporation, ~~conducting seismic activity agree otherwise,~~ it ~~shall be~~ *is* the obligation of ~~such the~~ person, firm, or corporation upon completion of *seismic* exploration to plug all “shot holes” in ~~such a~~ *the* manner ~~as shall be~~ specified by the board of oil and gas conservation to contain any water within its native strata by filling the ~~hole~~ *holes* with bentonite mud, cement, or other material approved by the board of oil and gas conservation ~~as required~~ to contain the water. ~~and capping the same~~ *In addition, the holes must be capped* in a manner and with a material specified by the board of oil and gas conservation, ~~so that the top of which the cap shall be of is~~ a sufficient depth below the surface of the land to allow cultivation. The portion of the ~~hole~~ *holes* above the cap ~~shall must~~ be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation *conducting the exploration* shall remove all stakes, markers, cables, ropes, wires, and debris or other material used in ~~such the~~ exploration and shall also restore the surface around any shot holes as near as practicable to its original condition.

(4) The *surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state* must ~~shall~~ remain on file with the secretary of state so long as the exploration is ~~carried on or engaged in~~ *conducted*, plus an additional 5 years ~~thereafter~~ *after the cessation of the exploration activities*; ~~provided, however, that the~~ *The aggregate liability for the exploration activities of the surety shall in no event may not exceed the amount of said the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state.* Upon the filing of ~~such the~~ *surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state,* ~~said the~~ secretary of state shall issue to the person, firm, or corporation a certificate showing that ~~such the~~ *surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state* has been filed. ~~and showing~~ *The certificate must contain the name of the designated resident agent within the state for service of process for such the person, firm, or corporation.*”

**Section 11.** Section 82-1-107, MCA, is amended to read:

**“82-1-107. Permitholder to furnish information to surface user.** (1) Before commencing seismic activity, the person, firm, or corporation *conducting the seismic activity* shall notify the surface user as to the approximate time schedule of the planned activity, and upon request, the following information ~~shall~~ also *must* be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm’s designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ self-insurance;

(d) the number *or other identifying information* ~~of~~ for the *surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state* and required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place; *and*

(f) anticipated need, if any, to obtain water from the surface user during planned seismic activity.

(2) The surface user is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained.”

Approved March 22, 2007

## CHAPTER NO. 34

[HB 162]

AN ACT REVISING THE REQUIREMENT FOR APPOINTMENT OF COUNSEL FOR A PERSON WITH A DEVELOPMENTAL DISABILITY IN A

PROCEEDING FOR COMMITMENT TO A RESIDENTIAL FACILITY; AND AMENDING SECTION 53-20-125, MCA.

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

**Section 1.** Section 53-20-125, MCA, is amended to read:

**“53-20-125. Outcome of screening — recommendation for commitment to residential facility — hearing.** (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) ~~At the request of the respondent, the respondent’s parents or guardian, or the responsible person, the~~ *The* court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent’s parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent’s advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent’s parents or guardian, the responsible person, the respondent’s advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the

respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team.”

Approved March 22, 2007

## CHAPTER NO. 35

[HB 226]

AN ACT PROHIBITING THE HOLDER OF A REPLACEMENT LICENSE, PERMIT, OR TAG FROM MAKING THE REPLACEMENT LICENSE, PERMIT, OR TAG AVAILABLE FOR USE BY ANOTHER PERSON; AMENDING SECTION 87-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-104, MCA, is amended to read:

**“87-2-104. Number of licenses, *permits*, or *tags* allowed — fees.** (1) It is unlawful for ~~any~~ 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 ~~(3)~~ (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) The department may prescribe rules and regulations for the issuance or sale of a replacement license, *permit*, or *tag* ~~in the event if~~ the original license, *permit*, or *tag* is lost, stolen, or destroyed ~~upon payment of a fee not to exceed \$5~~ upon payment of a fee not to exceed \$5.

~~(3)~~(4) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class A-5, Class A-7, Class B-7, Class B-8, Class B-10, Class B-11, or special antelope license to

an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4)(5) When authorized by the commission for game management purposes, the department may issue Class A-9, resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 or Class B-13 license to be eligible for a Class B-12 license. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5)(6) The fee for ~~any~~ a resident or nonresident license of any class issued under subsection (3) (4) must be set annually by the department and may not exceed the regular fee provided by law for that class or species.”

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

Approved March 22, 2007

## CHAPTER NO. 36

[HB 255]

AN ACT CLARIFYING THE TYPES OF RESIDENCES IN WHICH DISABLED OR HOMEBOUND CUSTOMERS MAY RECEIVE COSMETOLOGY AND BARBERING SERVICES OUTSIDE OF A SALON OR A SHOP; PROVIDING EXCLUSIONS FROM THE DEFINITION OF “SALON OR SHOP”; AND AMENDING SECTION 37-31-101, MCA.

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

**Section 1.** Section 37-31-101, MCA, is amended to read:

**“37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the board of barbers and cosmetologists provided for in 2-15-1747.

(2) “Booth” means any part of a salon or shop that is rented or leased for the performance of barbering, cosmetology, electrology, esthetics, or manicuring services, as specified in 39-51-204.

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

(4) (a) “Electrology” means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(5) “Esthetician” means a person licensed under this chapter to engage in the practice of esthetics.



(6) “Esthetics” means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) “Manicuring” includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) “Place of residence” means a home and the following residences defined under 50-5-101:

- (a) an assisted living facility;
- (b) an intermediate care facility for the developmentally disabled;
- (c) a hospice;
- (d) a critical access hospital;
- (e) a long-term care facility; or
- (f) a residential treatment facility.

~~(8)~~(9) “Practice or teaching of barbering” means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

- (a) shaving or trimming a beard;
  - (b) cutting, styling, coloring, or waving hair;
  - (c) straightening hair by the use of chemicals;
  - (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;
  - (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair;
- or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

~~(9)~~(10) (a) “Practice or teaching of cosmetology” means work included in the terms “hairdressing”, “manicuring”, “esthetics”, and “beauty culture” and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

~~(10)~~(11) (a) “Salon or shop” means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(b) *The term does not include a room provided in a place of residence that is used for the purposes of barbering, cosmetology, electrology, esthetics, or manicuring unless the owner, manager, or operator allows the room to be used for the practice of barbering or the practice of cosmetology to serve nonresidents for compensation, in which case the room must be licensed as a salon or a shop.*

(11)(12) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board."

Approved March 22, 2007

## CHAPTER NO. 37

[HB 274]

AN ACT ALLOWING SPECIAL MILITARY OR VETERAN LICENSE PLATES TO BE ISSUED FOR TRAVEL TRAILERS OR TRAILERS; AMENDING SECTION 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 61-3-458, MCA, is amended to read:

**"61-3-458. Special plates for military personnel, veterans, and spouses.** (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military or veteran license plates may not be issued for a motorcycle, quadricycle, ~~travel trailer, trailer,~~ semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force,

United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the

deceased veteran, except the special “DV” plates provided for under subsection (3)(b).

(5) For purposes of this section, “veteran” has the meaning provided in 10-2-101.”

**Section 2. Effective date.** [This act] is effective January 1, 2008.

Approved March 22, 2007

## CHAPTER NO. 38

[HB 290]

AN ACT ALLOWING THE FIRE SERVICES TRAINING SCHOOL TO MAKE ITS RESOURCES AVAILABLE TO LOCAL FIRE PROTECTION ENTITIES IN AN EMERGENCY; AND AMENDING SECTION 20-31-104, MCA.

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

**Section 1.** Section 20-31-104, MCA, is amended to read:

**“20-31-104. Coordination with other agencies.** (1) The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of regents.

(2) *The fire services training school may make its resources available, upon request of a local fire protection entity, for assistance in local emergencies.”*

Approved March 22, 2007

## CHAPTER NO. 39

[HB 402]

AN ACT REVISING FEES COLLECTED BY THE SUPREME COURT; REQUIRING CROSS-APPELLANTS TO PAY A FILING FEE; INCREASING CERTAIN FEES AND ADDING FEES; AMENDING SECTION 3-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 3-2-403, MCA, is amended to read:

**“3-2-403. Fees.** The clerk ~~must~~ *shall* collect the following fees:

(1) for filing the ~~transcript on~~ *notice of appeal* in any civil case appealed to the supreme court, ~~\$75~~ *\$100* payable by ~~both the appellant as payment in full for all services rendered in the case up to the remittitur to the court below and cross-appellant;~~

(2) for filing a petition for any writ, ~~\$75, as payment in full for all services rendered in the cause~~ *\$100;*

(3) *for retrieval of court records from the secretary of state, actual fees charged by the secretary of state;*

~~(3)~~(4) for a certificate of good standing as an attorney, \$5;

~~(4)~~(5) for preparing copies of documents on file, 15 cents ~~per a~~ *per a* page;

~~(5)~~(6) for each certified copy under seal, \$1.”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved March 22, 2007

## CHAPTER NO. 40

[SB 10]

AN ACT ESTABLISHING A SINGLE UNIFORM RATE OF MILEAGE ALLOWANCE FOR LEGISLATORS; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-18-503, MCA, is amended to read:

**“2-18-503. Mileage — allowance.** (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee, ~~including a legislator on legislative business,~~ is authorized to travel by motor vehicle, and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, ~~while traveling between their residences and Helena,~~ jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana

Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.”

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

Approved March 22, 2007

## CHAPTER NO. 41

[SB 11]

AN ACT REVISING THE OPTIONAL RETIREMENT SYSTEM MEMBERSHIP REQUIREMENT FOR EMPLOYEES OF THE LEGISLATIVE BRANCH PERFORMING DUTIES RELATED TO A LEGISLATIVE SESSION; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 19-3-412, MCA, is amended to read:

**“19-3-412. Optional membership.** (1) Except as provided in subsection (2), the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 10 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) ~~(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.~~

~~(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator’s prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator’s membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer’s~~

~~share of contributions required to purchase a legislator's service credit under this subsection (2)(b).~~

(e) A member who after April 17, 2003, is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) *for an employee described in subsection (1)(d), within 300 days of the commencement of the employee's employment; and*

(ii) *for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 180 days of the commencement of the employee's or elected official's employment.*

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2)(e), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service."

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

Approved March 22, 2007

## CHAPTER NO. 42

[SB 20]

AN ACT CLARIFYING THE AUTHORITY TO APPOINT A TEMPORARY CONSERVATOR; AMENDING SECTION 72-5-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 72-5-421, MCA, is amended to read:

**"72-5-421. Powers of court as to property and affairs of protected persons generally — temporary conservatorship.** The court has the following powers ~~which~~ *that* may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for ~~his~~ *the protected person's* benefit or the benefit of ~~his~~ *the protected person's* dependents. *If the court finds that the welfare of the person requires immediate action, it may, with or without notice, appoint a temporary conservator for the person for a specified period not to exceed 6 months. The court may designate the authority of the temporary conservator, depending on the needs and circumstances of the protected person. The court may not invest a temporary conservator with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary conservator must state the specific powers and duties of the temporary conservator.*

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor ~~which~~ *that* are or might be necessary for the best interests of the minor, ~~his~~ *the minor's* family, and members of ~~his~~ *the minor's* household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of ~~his~~ *the person's* household, all the powers over ~~his~~ *the person's* estate and affairs ~~which~~ *he that the person* could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to *the* power to:

(a) make gifts;



(b) convey or release ~~his~~ *the person's* contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercise or release ~~his~~ *the person's* powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate ~~which that~~ may extend beyond ~~his~~ *the person's* disability or life;

(f) exercise options of the disabled person to purchase securities or other property;

(g) exercise ~~his~~ *the person's* rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;

(h) exercise ~~his~~ *the person's* right to an elective share in the estate of ~~his~~ *the person's* deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that ~~he~~ *the protected person* either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person."

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

Approved March 22, 2007

## CHAPTER NO. 43

[SB 35]

AN ACT TO INCLUDE THE STATE OF MONTANA IN THE STATEWIDE MUTUAL AID SYSTEM; AMENDING SECTION 10-3-903, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 10-3-903, MCA, is amended to read:

**"10-3-903. Statewide mutual aid system — definitions.** As used in this part, the following definitions apply:

(1) "Committee" means the Montana intrastate mutual aid committee created in 10-3-904.

(2) "Disaster" has the meaning provided in 10-3-103.

(3) "Emergency" has the meaning provided in 10-3-103.

(4) “Member jurisdiction” means *the state of Montana* or a political subdivision or a federally recognized Indian tribe that participates in the system.

(5) “System” means the Montana intrastate mutual aid system provided for in 10-3-906.”

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

Approved March 22, 2007

## CHAPTER NO. 44

[SB 39]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 60TH LEGISLATURE; AND AMENDING SECTIONS 2-15-3304, 7-1-2111, 7-6-1544, 7-14-4631, 7-15-4296, 7-15-4299, 10-3-1204, 13-1-202, 15-2-102, 15-30-313, 15-35-102, 15-39-105, 15-39-107, 15-70-357, 16-2-101, 16-3-322, 16-3-324, 16-11-149, 17-5-507, 17-7-112, 20-3-324, 20-5-322, 20-5-420, 20-9-408, 20-9-443, 20-9-472, 20-9-501, 20-25-421, 23-2-502, 23-2-614, 23-2-615, 30-9A-501, 33-1-1302, 33-1-1303, 33-10-106, 33-20-1303, 33-20-1315, 33-22-2001, 37-1-101, 37-1-303, 37-8-202, 37-27-302, 37-31-331, 37-73-216, 37-47-201, 44-1-504, 45-5-209, 50-60-115, 50-60-705, 61-1-101, 61-3-101, 61-3-116, 61-3-217, 61-3-224, 61-3-301, 61-3-303, 61-3-311, 61-3-321, 61-3-461, 61-3-462, 61-3-721, 61-4-109, 61-5-121, 61-8-715, 76-9-103, 76-14-103, 76-15-302, 82-4-127, 82-4-222, 85-2-225, 85-2-350, AND 87-5-704, MCA, SECTION 14, CHAPTER 464, LAWS OF 2005, AND SECTION 5, CHAPTER 535, LAWS OF 2005.

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

**Section 1.** Section 2-15-3304, MCA, is amended to read:

**“2-15-3304. State coordinator for rangeland resources.** The department shall maintain and staff the office of state coordinator for the rangeland resources ~~act~~ *Montana Rangeland Resources Act.*”

**Section 2.** Section 7-1-2111, MCA, is amended to read:

**“7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers; not otherwise provided for; and for fixing the penalties of officers’ bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of \$50 million or more;

(b) second class—all counties having a taxable valuation of \$30 million or more and less than \$50 million;

(c) third class—all counties having a taxable valuation of \$20 million or more and less than \$30 million;

(d) fourth class—all counties having a taxable valuation of \$15 million or more and less than \$20 million;

(e) fifth class—all counties having a taxable valuation of \$10 million or more and less than \$15 million;

(f) sixth class—all counties having a taxable valuation of \$5 million or more and less than \$10 million;

(g) seventh class—all counties having a taxable valuation of less than \$5 million.

(2) As used in this section, “taxable valuation” means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer’s rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer’s rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-332(7);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001;

(i) 6% of the taxable value of the county on January 1 of each tax year; ~~and~~

(j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702; *and*

(k) *33 1/3% of the value of bentonite produced during the previous year as provided in 15-39-110(15) and as reported under 15-39-101.”*

**Section 3.** Section 7-6-1544, MCA, is amended to read:

**“7-6-1544. Resort area district board — election — term.** (1) The first election of the board must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

(2) A petition of nomination, signed by at least five electors from within the resort area district, may be filed with the election administrator in any county containing a portion of the resort area district. A nominating petition must be filed ~~at least~~ *between* 135 days and ~~not fewer than~~ 75 days before the election.

(3) (a) If the number of candidates filing a petition is insufficient to complete board membership, the existing board shall appoint as many members as are needed to complete the five-member board.

(b) An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment.

If an appointee does not receive a majority of votes cast in the election, the appointee's term expires, and the board shall initiate the process described in this subsection (3).

(c) The term of a resort area district board member appointed and subsequently elected under the provisions of this subsection (3) is 4 years."

**Section 4.** Section 7-14-4631, MCA, is amended to read:

**"7-14-4631. Compliance with land use laws required.** (1) All parking facilities of a commission ~~shall be~~ *are* subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the parking facility is situated.

(2) In the planning and location of any parking facility, a commission ~~shall be~~ *is* subject to the relationship of the facility to any ~~master plan~~ *growth policy* or sections of a ~~master plan~~ *growth policy* for the development of the area in which the commission functions."

**Section 5.** Section 7-15-4296, MCA, is amended to read:

**"7-15-4296. Aerospace transportation and technology districts.** (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an aerospace transportation and technology district for aerospace transportation and technology infrastructure development projects if the proposed aerospace transportation and technology district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for use in accordance with the area ~~master planning~~ *growth policy* document;

(c) does not include any property included within an existing urban renewal area district or industrial infrastructure development district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the location and retention of aerospace transportation and technology infrastructure development projects in the state.

(2) An aerospace transportation and technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293."

**Section 6.** Section 7-15-4299, MCA, is amended to read:

**"7-15-4299. Industrial districts.** (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for light or heavy industrial use in accordance with the area ~~master planning~~ *growth policy* document;

(c) does not include any property included within an existing urban renewal area district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293.”

**Section 7.** Section 10-3-1204, MCA, is amended to read:

**“10-3-1204. State emergency response commission.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 27 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire *services* training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. Members of the commission serve ~~a term~~ *terms* of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state *hazardous material incident* response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

**Section 8.** Section 13-1-202, MCA, is amended to read:

**"13-1-202. Forms and rules prescribed by secretary of state — consultation.** (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103(2)(3);

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section.”

**Section 9.** Section 15-2-102, MCA, is amended to read:

**“15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto ~~to the subject of taxation.~~ ~~No~~ A person ~~so~~ appointed may *not* hold any other state office or any office under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and ~~shall~~ *may* not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person’s duties. The state tax appeal board is ~~transferred~~ *attached* to the department of administration for administrative purposes only as ~~is specified~~ *provided* in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) State tax appeal board members ~~shall~~ *must* be paid a salary equivalent to that of a grade 17 salary as provided in 2-18-312. State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for classified state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must have an additional 5% added to the salary. All members of the board ~~shall~~ *must* receive travel expenses as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ when away from the capital on official business.”

**Section 10.** Section 15-30-313, MCA, is amended to read:

**“15-30-313. Deferment of taxes for person in military service — filing of return.** (1) The collection of the tax imposed by 15-30-103 from a person in the military service, as defined by section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, ~~of the tax imposed by 15-30-103,~~ whether due prior to or during the person’s period of military service, must be deferred for not more than 180 days after the termination of the person’s period of military service if the person’s ability to pay the tax is materially impaired by reason of military service.

(2) Interest and penalty on any amount of tax that is deferred for any period under 15-30-314 or this section may not accrue for the period of deferment by reason of nonpayment. The running of any statute of limitations against the payment of the tax by any lawful means must be suspended for the period of military service of any person for whom the collection of the tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

(3) In accordance with the provisions of section 7508 of the Internal Revenue Code, 26 U.S.C. 7508, the individual income tax return of a person, ~~and the person’s spouse,~~ serving in a combat zone or participating in a contingency operation ~~and of the person’s spouse~~ is due on or before 180 days after the time of disregarded service plus the disregarded period of qualified hospitalization attributable to an injury suffered while serving in the combat zone or contingency operation.”

**Section 11.** Section 15-35-102, MCA, is amended to read:

**“15-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Agreement” means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) “Base consumption level” for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), “base production level” for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) “Broker” means any person who resells Montana coal.

(5) “Contract sales price” means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes ~~only:~~

~~(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;~~

~~(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;~~



~~(e) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid; and~~

~~(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.~~

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

**Section 12.** Section 15-39-105, MCA, is amended to read:

**"15-39-105. Penalties and interest for violation.** (1) (a) A person who fails to file a statement as required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the statement required by 15-39-102 and to pay the tax before the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216~~(1)(d)~~(2)."

**Section 13.** Section 15-39-107, MCA, is amended to read:

**“15-39-107. Interest on deficiency — penalty.** (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the statement and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(e)(2) must be added to the amount of the deficiency.”

**Section 14.** Section 15-70-357, MCA, is amended to read:

**“15-70-357. Improperly imported fuel — seizure.** (1) As used in this section, the following definitions apply:

(a) “conveyance” means a tank car, vehicle, or vessel that is used to transport fuel;

(b) “department” means the department of transportation; and

(c) “peace officer” means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director’s designee before seizing fuel.

(4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection ~~(5)~~ (6); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

**Section 15.** Section 16-2-101, MCA, is amended to read:

**"16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate and less the agency liquor store's

~~weighed~~ *weighted* average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted *average* discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) Agency liquor stores must receive commissions payable as follows:

(a) (i) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or

(ii) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus

(b) for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

(i) for agency liquor stores with a volume of sales of \$500,000 or more, 0.125% beginning July 1, 2002, 0.5% beginning July 1, 2003, and 0.875% beginning July 1, 2004;

(ii) for agency liquor stores with a volume of sales of less than \$500,000, ~~1.25% beginning July 1, 2002, 1.25% beginning July 1, 2003, and 1.5% beginning July 1, 2004;~~ or

(iii) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(b)(i) or (4)(b)(ii), for each *agency liquor* store in the city, an addition to its commission rate equal to the increase granted the *agency liquor* store with the lowest commission rate.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and must be renewed at the existing commission rate for additional 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be reviewed ~~on July 1, 1998, and every succeeding 3~~ years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years ~~after July 1, 1995,~~ at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(10) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(11) A person or entity may not hold an ownership interest in more than one agency liquor store.

(12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

**Section 16.** Section 16-3-322, MCA, is amended to read:

**"16-3-322. Recordkeeping.** (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser's name, address, and date of birth and the number of the purchaser's driver's license, state-issued or military identification card, or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale; *and*

~~[(d) the keg identification number required under 16-3-321]; and~~

~~(e)(d) the purchaser's signature and date of purchase.~~

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to 16-3-323.”

**Section 17.** Section 16-3-324, MCA, is amended to read:

**“16-3-324. Violations.** (1) A person who knowingly fails to attach a keg tag as provided in 16-3-321 is guilty of a misdemeanor and shall be fined an amount not to exceed \$100.

(2) A person may not remove, deface, or damage the identification on a keg purposely to make it unreadable. A person convicted of purposely removing, ~~or~~ defacing, *or damaging* a tag shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for not more than 6 months, or both.”

**Section 18.** Section 16-11-149, MCA, is amended to read:

**“16-11-149. Hearings before state tax appeal board.** A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order ~~in the premises as on the grounds that~~ it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days’ notice in writing to the person or persons to be investigated.”

**Section 19.** Section 17-5-507, MCA, is amended to read:

**“17-5-507. State pledge of gasoline tax — use.** (1) The state pledges, appropriates, and directs to be credited as received to the debt service account~~;~~ ~~as defined in 17-5-401,~~ that portion of the net proceeds from the collection of gasoline taxes that may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation made in this section must remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxes. ~~The term “net proceeds”, as used in this section, means all funds in the state treasury as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, less the amount of all refunds of those taxes for which applications have been made pursuant to law but that have not yet been paid or rejected. The term “debt service account”, as used in this section, means a separate highway fund that is created within the debt service fund type established by 17-2-102 and must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest on those bonds when due, so long as the bonds or interest remain unpaid.~~

(2) Money in the debt service account must be used to:

(a) pay interest and principal when due on highway bonds;

(b) accumulate a reserve, in the amount required in subsection (2)(c), for the further security of those payments; and

(c) maintain a reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal that will become due on all bonds that are then outstanding in any subsequent fiscal year.

(3) Money received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) must be transferred by the treasurer to the highway revenue account in the state special revenue fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to that account an amount sufficient to restore the balance from the next receipts of net proceeds from the collection of gasoline taxes.

(4) *As used in this section:*

(a) *“debt service account” means a separate highway fund that is created within the debt service fund type established by 17-2-102 and must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest on those bonds when due, so long as the bonds or interest remain unpaid; and*

(b) *“net proceeds” means all funds in the state treasury as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, less the amount of all refunds of those taxes for which applications have been made pursuant to law but that have not yet been paid or rejected.”*

**Section 20.** Section 17-7-112, MCA, is amended to read:

**“17-7-112. Submission deadlines — budgeting schedule.** The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) (a) By September 1, each agency shall submit the information required under 17-7-111 to the budget director. The department of justice shall submit information received from counties concerning the state’s share of county attorney salaries.

(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department’s budget and appropriated for that purpose.

(3) By September 1, the budget director shall submit each state agency’s budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must



be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the ~~information technology~~ *statewide project budget* summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

**Section 21.** Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, ~~teacher~~ *teacher's* aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the *school* districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) ~~subject to 15-10-420,~~ establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except *that* trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

(30) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.”

**Section 22.** Section 20-5-322, MCA, is amended to read:

**“20-5-322. Residency determination — notification — appeal for attendance agreement.** (1) In considering an out-of-district attendance agreement, except as provided in 20-9-707, the trustees shall determine the child’s district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child’s district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county

superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

(6) For purposes of payment under 20-5-324(6)(2), a nonresident student who becomes a resident by reaching the age of 18 *years of age* during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year."

**Section 23.** Section 20-5-420, MCA, is amended to read:

**"20-5-420. Self-administration of asthma medication.** (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5)(1)(h).

(d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement

acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

- (a) while in school;
- (b) while at a school-sponsored activity;
- (c) while under the supervision of school personnel;
- (d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or
- (e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent or guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications."

**Section 24.** Section 20-9-408, MCA, is amended to read:

**"20-9-408. Definition of forms of bonds.** As used in this part, *the following definitions apply:*

(1) ~~"amortization~~ *"Amortization bond"* means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) ~~"general~~ *"General obligation bonds"* means bonds that pledge the full faith and credit and the taxing power of a school district;

(3) ~~"impact~~ *"Impact aid revenue bonds"* means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the ~~account~~ *fund* established in 20-9-514; ~~and.~~

(4) ~~"serial~~ *"Serial bonds"* means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of

issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment.”

**Section 25.** Section 20-9-443, MCA, is amended to read:

**“20-9-443. Disposition of remaining debt service fund.** (1) Except as provided in subsection (2), when all of the bonds, bond interest, and special improvement district obligations of a school district have been fully paid, all money remaining in the debt service fund for the school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district if the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district’s impact aid ~~account~~ *fund* established pursuant to 20-9-514.”

**Section 26.** Section 20-9-472, MCA, is amended to read:

**“20-9-472. Security for impact aid revenue bonds — agreement of state.** (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to the ~~account~~ *fund* established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district’s impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of

the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds.”

**Section 27.** 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, ~~or~~ who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer’s contributions to the systems 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 ~~agreement~~ *cooperative* fund if the fund is supported solely from districts’ general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

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

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

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

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer’s contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer

contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under 20-9-631;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (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 28.** Section 20-25-421, MCA, is amended to read:

**“20-25-421. (Temporary) Charges for tuition — waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

- (i) a paid or volunteer member of a municipal or rural fire department;
- (ii) a law enforcement officer as defined in 7-32-201; or
- (iii) a full-time highway patrol officer.

(e) waive tuition for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program established by the department of military affairs. The waivers provided for in this subsection (2)(e) are intended to be available for up to 5 years after the person qualifies. (Terminates June 30, 2009—sec. 5, Ch. 577, L. 2005.)

**20-25-421. (Effective July 1, 2009) Charges for tuition — waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

- (i) a paid or volunteer member of a municipal or rural fire department;
- (ii) a law enforcement officer as defined in 7-32-201; or
- (iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year ~~in accordance with the national guard education benefit program provided for in 10-1-121.~~"

**Section 29.** Section 23-2-502, MCA, is amended to read:

**"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued by the county treasurer to the owner of a motorboat or sailboat or by the department of justice to dealers or manufacturers, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(2) "Dealer" means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(3) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(4) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

(6) "Lienholder" means a person holding a security interest.

(7) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(8) (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.

(9) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(10) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

(12) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

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

(14) "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.

(15) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees ~~in lieu of tax~~ imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

(16) (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.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

(20) "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.

(21) "Waters of this state" means any waters within the territorial limits of this state."

**Section 30.** Section 23-2-614, MCA, is amended to read:

**"23-2-614. Exemptions.** (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

(a) display visual proof that a nonresident temporary-use *snowmobile* permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

**Section 31.** Section 23-2-615, MCA, is amended to read:

**"23-2-615. Nonresident temporary-use *snowmobile* permits — use of fees.** (1) The requirements for a nonresident ~~temporary-snowmobile-use temporary-use snowmobile~~ permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address; and

(ii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of \$15, of which 50 cents is a search and rescue surcharge, a nonresident ~~temporary-snowmobile-use temporary-use snowmobile~~ sticker must be issued. The sticker must be permanently affixed in a conspicuous manner on the snowmobile.

(2) The ~~temporary~~ temporary-use *snowmobile* permit is valid during the fiscal year in which it is issued.

(3) The temporary-use *snowmobile* permit is not proof of ownership, and a certificate of title may not be issued.

(4) (a) A nonresident ~~temporary-snowmobile-use temporary-use snowmobile~~ permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(b) A nonresident ~~temporary-snowmobile-use~~ *temporary-use snowmobile* permit is not required for a snowmobile that will be used only on trails that are managed jointly by agreement between Montana and another state.

(5) Except as provided in subsection (1)(b), money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(a) \$8 must be expended in areas that are impacted by nonresident snowmobile use to assist in offsetting snowmobile trail grooming costs;

(b) \$1.50 must be used by the department for the enforcement of snowmobile laws pursuant to 23-2-641;

(c) 50 cents must be remitted to the license agent who sold the nonresident ~~temporary-snowmobile-use~~ *temporary-use snowmobile* permit; and

(d) \$4.50 must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100.”

**Section 32.** Section 30-9a-501, MCA, is amended to read:

**“30-9A-501. Filing office.** (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

(3) The office in which a financial institution ~~must~~ *is required to* file an effective financing statement, as defined in 7 U.S.C. 1631, is the office of the secretary of state.”

**Section 33.** Section 33-1-1302, MCA, is amended to read:

**“33-1-1302. Insurance, medical care discount card, and pharmacy discount card fraud — insurer.** (1) A person commits the act of insurance, medical care discount card, or pharmacy discount card fraud when, in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person’s detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, medical care discount card, or pharmacy discount card.

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, or a medical care discount card fee, or a *pharmacy discount card fee* commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

(8) As used in this section “medical care discount card” and “pharmacy discount card” have the meanings provided in 33-38-102.”

**Section 34.** Section 33-1-1303, MCA, is amended to read:

**“33-1-1303. Reporting requirements.** (1) An insurer, insurance producer, or other person who has reason to believe *that* insurance, *medical care discount card*, or *pharmacy discount card* fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer’s or other person’s insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance, *medical care discount card*, or *pharmacy discount card* fraud.”

**Section 35.** Section 33-10-106, MCA, is amended to read:

**“33-10-106. Plan of operation — delegation to other organization.** (1) (a) The association shall submit to the commissioner a plan of operation and any amendments ~~thereto~~ *to the plan of operation that are necessary or suitable to assure ensure* the fair, reasonable, and equitable administration of the

association. The plan of operation and any amendments thereto shall to the plan become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as that are necessary or advisable to effectuate the provisions of this part. Such The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall must:

(a) establish the procedures whereby under which all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;

(b) establish procedures for handling assets of the association;

(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;

(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) establish regular places and times for meetings of the board of directors;

(f) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;

(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(h) establish the procedures whereby under which selections for the board of directors will be submitted to the commissioner;

(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105(2)(b)(3)(b) and 33-10-116, are delegated to a corporation, association, or other organization which that performs or will perform functions similar to those of this the association or its equivalent in two or more states. Such a A corporation, association, or organization shall must be reimbursed as a servicing facility would be reimbursed and shall must be paid for its performance of any other functions of the association. A delegation under this subsection shall take takes effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which that extends protection not substantially less favorable and effective than that provided by this part."

**Section 36.** Section 33-20-1303, MCA, is amended to read:

**"33-20-1303. License requirements.** (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsection subsections (2)(b) and (2)(c), a person may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker



from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. A person who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit a person licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) In order to obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

(i) incorporated or organized under the laws of this state; or

(ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.

(b) The hours of continuing education required under subsection ~~(4)(a)~~ (5)(a) must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with 33-17-1203~~(3)~~(2) must be terminated and promptly surrendered to the commissioner."

**Section 37.** Section 33-20-1315, MCA, is amended to read:

**"33-20-1315. Rules — standards — bond.** The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts for insured persons who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners. When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.

(2) shall require a bond or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; and

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts;

(b) fees that are commensurate with fees charged pursuant to 33-2-708; and

(c) the continuing education program provided for in 33-20-1303(4)(5).”

**Section 38.** Section 33-22-2001, MCA, is amended to read:

**“33-22-2001. Establishment of small business health insurance pool — intent.** (1) There is established a nonprofit legal entity known as the small business health insurance pool, with participating membership consisting of all employer members of the purchasing pool.

(2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the provisions of 33-22-1815 through 33-22-1817.

(3) Subject to the conditions in 53-6-1201, the purchasing pool shall make group health plan coverage available effective January 1, 2006.

(4) It is the intent of the legislature that the board:

(a) establish criteria that will allow the greatest number of employees possible to be eligible for premium assistance payments by not permitting eligibility for premium assistance payments under this part to employees who continue ~~{to maintain enrollment in another}~~ other comprehensive health insurance coverage through a spouse, parent, or other person; and

(b) allow eligible small employers to determine the length of the waiting period that will apply to their employees as long as the waiting period:

(i) is not more than 12 months; and

(ii) applies to all eligible employees within that small group in the same manner.

(5) The legislative auditor shall conduct or have conducted, at least once each biennium covering the prior 2 fiscal years, a financial compliance audit of the board and the purchasing pool. The cost of the audit must be paid for by the purchasing pool as a direct cost not subject to the cap on administrative expenses.”

**Section 39.** Section 37-1-101, MCA, is amended to read:

**“37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department of ~~labor and industry~~ shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307~~(1)~~(e)(1)(d);

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided."

**Section 40.** Section 37-1-303, MCA, is amended to read:

**"37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307~~(1)~~(e)(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals."

**Section 41.** Section 37-8-202, MCA, is amended to read:

**"37-8-202. Organization — meetings — powers and duties.** (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of ~~nurse specialists~~ *advanced practice registered nurses*. If considered appropriate for a ~~nurse specialist~~ *an advanced practice registered nurse* who applies to the board for authorization, prescriptive authority must be granted.

(i) establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this

program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

**Section 42.** Section 37-27-302, MCA, is amended to read:

**"37-27-302. Administration of prescription drugs prohibited — exceptions.** A licensed direct-entry midwife may not dispense or administer prescription drugs other than newborn vitamin K (oral or intramuscular preparations), pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with ~~ARM 16.24.215~~ *administrative rules adopted by the department of public health and human services*, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician."

**Section 43.** Section 37-31-331, MCA, is amended to read:

**"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.** (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or a school of barbering, cosmetology, electrology, esthetics, or manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of salons or shops or schools of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

(f) permitting a ~~certificate of registration or~~ license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.”

**Section 44.** Section 37-73-216, MCA, is amended to read:

**“37-73-216. Temporary elevator mechanic’s license.** (1) (a) If, in the case of an emergency or disaster as defined in 10-3-103, the department determines that the number of licensed elevator mechanics is insufficient to cope with the emergency or disaster, the department shall contact the licensed elevator contractors operating in the state and request that the elevator contractors certify to the department any persons in their employ who have an acceptable combination of education and experience to perform elevator work without direct supervision.

(b) As soon as practicable, the department shall issue to a person certified pursuant to subsection (1)(a) a temporary elevator mechanic’s license. ~~The department may not charge a fee for a license issued under this section.~~

(c) The license may not be valid for more than 30 days. However, the department may renew the license for 30-day periods in the case of a continuing emergency or disaster.

(d) The department may limit a person’s temporary license to certain equipment or to certain geographical areas.

(2) (a) An elevator contractor shall inform the department if there are not any licensed elevator mechanics available to perform elevator work on behalf of the elevator contractor.

(b) The elevator contractor may submit a list to the department of any persons that the elevator contractor certifies have an acceptable combination of documented education and experience to perform the work of an elevator mechanic without direct supervision.

(c) The department shall issue a temporary elevator mechanic’s license to any person, certified by an elevator contractor, who applies for a license to the department on a form supplied by the department. The department may charge a fee for a temporary license issued under this subsection that is commensurate with the department’s costs in administering this subsection (2).

(d) A temporary license issued under this subsection (2) is valid for a period of 30 days, and the department shall renew the license for additional 30-day periods as long as the shortage of licensed elevator mechanics exists and the licensee is employed by the certifying elevator contractor. However, the department may refuse to renew a temporary license for any temporary licensee that the department determines has had an adequate opportunity to obtain a license under the provisions of 37-73-203 and 37-73-204.”

**Section 45.** 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 ~~management~~ *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)."

**Section 46.** Section 44-1-504, MCA, is amended to read:

**"44-1-504. Special revenue account to partially fund highway patrol officers' salaries — statutory appropriation.** (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to 2-18-303~~(10)~~(9):

~~(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;~~

~~(b)(a) the base salary and associated operating costs for new highway patrol officer positions created after June 30, 2006; and~~

~~(e)(b) biennial salary increases after June 30, 2006, for highway patrol officers."~~

**Section 47.** Section 45-5-209, MCA, is amended to read:

**“45-5-209. Partner or family member assault — no contact order — notice — violation of order — penalty.** (1) A court may issue a standing no contact order and direct law enforcement to serve the order on all defendants charged with a violation of 45-5-206. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person’s location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with a violation of 45-5-206. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 must be supported by a peace officer’s affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with a violation of 45-5-206 is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

“You have been charged with an assault on a partner or family member. You are not allowed to have contact with \_\_\_\_\_ (list names). You may not \_\_\_\_\_. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order.”

(6) The court shall review and amend, if appropriate, the no contact order at the defendant’s first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 at the time of the defendant’s arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of ~~this offense~~ *a no contact order*.

(c) An offender convicted of violation of a no contact order 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.

(9) As used in this section, the following definitions apply:



(a) “No contact order” means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) “Partner” or “family member” has the meaning provided in 45-5-206.

(c) “Protected person” means a victim of a partner or family member assault listed in a no contact order.”

**Section 48.** Section 50-60-115, MCA, is amended to read:

**“50-60-115. Building codes council — purpose and structure.** (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 12 members appointed by the governor, unless otherwise specified, as follows:

(a) a practicing architect licensed in Montana;

(b) a practicing professional engineer licensed in Montana;

(c) a representative from the building contractor industry;

(d) a county, city, or town building inspector;

(e) a representative of the manufactured housing industry;

(f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;

(g) the director of the department of *public* health and human services or the director’s designee;

(h) a licensed electrician selected by the *state electrical* board of electricians;

(i) a licensed plumber selected by the board of plumbers;

(j) a licensed elevator mechanic selected by the department;

(k) the state fire marshal or the fire marshal’s designee; and

(l) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122.”

**Section 49.** Section 50-60-705, MCA, is amended to read:

**“50-60-705. Authority of department — rulemaking.** (1) The department may consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of this part.

(2) (a) The department shall adopt rules relating to the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of this part.

(b) The department may adopt by reference national standards for equipment subject to the provisions of this part, including national safety codes for elevators and escalators, safety standards for platform lifts and stairway ~~chairs~~ *chairlifts*, safety codes for existing elevators and escalators, and standards for automated people movers.

(3) The department may modify or grant exceptions to any provision of this part or any rule or standard adopted pursuant to this part if to do so would not jeopardize the public safety or welfare.”

**Section 50.** 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 ~~must~~ *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) “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.

(5) “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.

(6) “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.

(7) (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 (7):

(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.

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

(9) "County where a *the* vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is

leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "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.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(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 (11)(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.

(12) "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.

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

(14) "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.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "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.

(17) "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.

(18) "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.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "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.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "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.

(23) "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.

(24) "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.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "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.

(28) "Mobile home" or "house trailer" has the meaning provided in 15-1-101.

(29) (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.

(30) (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.

(31) (a) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. 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.

(32) (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.

(33) "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.

(34) (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.

(35) (a) "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 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.

(36) “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.

(37) “Nonresident” means a person who is not a resident of this state.

(38) (a) “Not used for general transportation purposes” means the operation of a motor vehicle, registered as a collector’s item, a custom vehicle, or a street rod, to or from a car 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.

(39) (a) “Off-highway vehicle” means a self-propelled vehicle used 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) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

(40) “Operator” means a person who is in actual physical control of a motor vehicle.

(41) “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.

(42) “Person” means an individual, corporation, partnership, association, firm, or other legal entity.

(43) “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.

(44) “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.

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

(46) (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.

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

(48) (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.

(49) "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50) "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.

(51) "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, or pole trailer 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.

(52) "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.

(53) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54) "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55) "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.

(56) (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.



(57) "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.

(58) "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.

(59) "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.

(60) (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.

(61) (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.

(62) (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.

(63) "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.

(64) "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.

(65) "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

(66) "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.

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

(68) (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.

(69) "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.

(70) "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.

(71) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(72) “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.

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

(74) “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.

(75) “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.

(76) (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.

(77) “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.

(78) “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.

(79) “Wholesaler” means a person, firm, partnership, association, or corporation 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, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1.”

**Section 51.** Section 61-3-101, MCA, is amended to read:

**“61-3-101. Duties of department — records.** (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each motor vehicle, trailer,

semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile must contain the following information:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, including, as pertinent to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile:

(i) the manufacturer of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(ii) the manufacturer's designation of the style of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, if applicable, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as shown by the manufacturer;

(vi) the distinctive license number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and a record of all fees and local

option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a motor vehicle, trailer, semitrailer, pole trailer, *camper*, motorboat, personal watercraft, sailboat, or snowmobile must contain, at a minimum, the following information:

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data considered to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to motor vehicles, trailers, semitrailers, pole trailers, *campers*, motorboats, personal watercraft, sailboats, or snowmobiles that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, motor vehicle records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

**Section 52.** Section 61-3-116, MCA, is amended to read:

**"61-3-116. Services that may be performed by authorized agent.** (1) The department may authorize a person to perform, on the department's behalf, specific motor vehicle titling, registration, or driver licensing functions assigned to or administered by the department under Title 23, chapter 2, parts 5, 6, and 8 or this title. The authorization must be evidenced by an authorized agent agreement.

(2) An authorized agent must meet all of the requirements established by the department.

(3) An authorized agent shall submit to the department or its designee all statutorily prescribed fees, taxes, or penalties the authorized agent collects.

(4) (a) Except when specifically prohibited by statute or the authorized agent agreement, in addition to statutorily prescribed fees, taxes, and penalties, an authorized agent may collect and retain a reasonable convenience fee for services provided.

(b) If an authorized agent is a municipal or county officer, the convenience fee may be charged and collected as permitted under 7-5-2133 or 7-5-4125.

(5) The department may provide an automated mechanism to ensure that any statutorily prescribed fee, tax, or penalty collected by an authorized agent or a county treasurer in a county other than the county where a *the* vehicle is

domiciled is transferred to the county treasurer of the county where the vehicle is domiciled.

(6) As used in this section, “person” has the meaning provided in 61-1-101(1)(b).”

**Section 53.** Section 61-3-217, MCA, is amended to read:

**“61-3-217. Certificate of title — duties — examination of application — records check — incomplete application.** (1) (a) Upon receipt of an application for a certificate of title and any supporting documents, an authorized agent of the department or a county treasurer shall:

(i) review the application and documents;

(ii) complete the records check required in subsection (2); and

(iii) if an authorized agent of the department or the county treasurer is satisfied as to the genuineness and regularity of the application and satisfied that the applicant is entitled to the issuance of a certificate of title, enter the transfer of interest on the electronic record of title.

(b) If an authorized agent of the department or the county treasurer is not satisfied as to the genuineness and regularity of the application or is not satisfied that the applicant is entitled to the issuance of a certificate of title, the authorized agent or the county treasurer may not enter the transfer of interest on the electronic record of title.

(c) If an authorized agent of the department or the county treasurer enters the transfer of interest on the electronic record of title, an authorized agent or the county treasurer shall:

(i) issue a transaction summary receipt to the applicant and, if requested, to any secured party or lienholder with a perfected security interest; and

(ii) as prescribed by the department, forward to the department the application, the assigned certificate of title, and any other documents provided in support of the application.

(2) The department, its authorized agent, or a county treasurer who first receives an application for a certificate of title shall check the vehicle identification number shown on the application against:

(a) the records of motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles maintained by the department under 61-3-101;

(b) the reported stolen motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile databases maintained on the state’s criminal justice information network and by the national crime information center; and

(c) any other records or databases prescribed by the department.

(3) (a) Upon receipt of an application for a certificate of title and supporting documents that have been processed by an authorized agent of the department or a county treasurer, the department shall review the documents to determine if the application is complete. If the department determines that the application is incomplete, the department shall enter the incomplete status of the application on the ~~electrie~~ *electronic* record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and return to the applicant, by first-class mail, the application and all supporting documents. The department shall provide a statement with a

specific description of the additional information or documents that must be supplied by the applicant to complete the application process.

(b) The department may not complete the application process, remove the incomplete status notation on the electronic record of title, or issue a certificate of title until the applicant returns the completed application, including any supporting additional information or documents, to the department.”

**Section 54.** Section 61-3-224, MCA, is amended to read:

**“61-3-224. Temporary registration permit — issuance — placement — fees.** (1) The department, an authorized agent, or a county treasurer may issue a temporary registration permit to:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle *or vessel* under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for the vehicle under this chapter;

(d) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident’s jurisdiction of residence;

(e) a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; or

(f) a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(2) A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle *or vessel* under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident’s jurisdiction of residence; or

(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(3) A temporary registration permit issued under this section must contain the following information:

(a) a temporary plate number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile, including year, make, model, and vehicle identification number, the name of the person from whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile was transferred, the name, mailing address, and residence address of the person to whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile has been transferred, and the date of issuance.

(4) A temporary registration permit for:

(a) a motor vehicle, trailer, semitrailer, or pole trailer must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle must be plainly visible and firmly attached to the vehicle or vessel.

(5) (a) Except as provided in 61-3-431 and subsection (5)(b) of this section, a \$3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of \$8 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(6) The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(7) If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permitholder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

**Section 55.** Section 61-3-301, MCA, is amended to read:

**"61-3-301. Registration — license plate required — display.** (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer* upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer* is properly registered and has the proper license plates conspicuously displayed, ~~one on the front and one on the rear of~~ *on* the motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, *each or travel trailer*. A license plate must be securely fastened to prevent it from swinging and ~~unobstructed~~ *may not be obstructed* from plain view.



(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must ~~display~~ *have* a single license plate *displayed* on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod. *All other motor vehicles must have one license plate displayed on the front and one licence plate displayed on the rear of the motor vehicle.*

(c) A person may not display on a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer* at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer* a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the ~~motor vehicle;~~ *is domiciled or the county where the* trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer* is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer* on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates issued under 61-3-332(3)(a) or special license plates issued under 61-3-332(8) or 61-3-421 more than 18 months after a new design of standard license plates or special license plates has been issued, except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468.

(4) For the purposes of this section, “conspicuously displayed” means that the required license plates are obviously visible and firmly attached to:

(a) the front *bumper* and the rear bumper of a motor vehicle, ~~trailer, semitrailer, or pole trailer~~ equipped with front and rear bumpers, *except for a custom vehicle or street rod as provided in subsection (1)(b); or*

(b) ~~either a clearly visible locations~~ *location* on the ~~front and the rear exteriors of a motor vehicle;~~ *rear of a* trailer, semitrailer, ~~or~~ pole trailer, *or travel trailer.”*

**Section 56.** Section 61-3-303, MCA, is amended to read:

**“61-3-303. Original registration — process — fees.** (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner permanently resides or, if the motor vehicle, trailer, semitrailer, or pole trailer is owned by a corporation or used primarily for commercial purposes, in the county where the ~~motor vehicle;~~ *is domiciled or the county where the* trailer, semitrailer, or pole trailer is domiciled.

(2) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321(2) or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of \$1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of \$1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.”

**Section 57.** Section 61-3-311, MCA, is amended to read:

**“61-3-311. Registration — time periods.** (1) Unless a motor vehicle, trailer, semitrailer, or pole trailer is subject to permanent registration under this title and except as provided in 61-3-313, 61-3-701, 61-3-721, and subsection (3) of this section, the department, an authorized agent, or a county treasurer shall, upon original registration of a motor vehicle in this state, assign each motor vehicle to a registration period, as provided in 61-3-316, based upon the calendar month in which the motor vehicle is first registered in this state and designate the calendar year in which the current registration will expire.

(2) Each registration period commences on the first day of the calendar month in the calendar year in which the motor vehicle is registered and the motor vehicle’s registration expires on the earlier of:

(a) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle’s registration decal if the motor vehicle is registered for a minimum 12-month period;

(b) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle’s registration decal if the motor vehicle is registered for a period of at least 13 but less than 25 months; or

(c) the transfer of ownership of the motor vehicle, trailer, semitrailer, or pole trailer to another person.

(3) (a) Upon request of the motor vehicle owner, a county treasurer may assign a motor vehicle to a registration period, as provided in 61-3-316, other than a *registration period beginning in* the calendar month in which the motor vehicle is first registered in this state if at least 13 but less than 25 months will elapse between the first day of the calendar month in which the motor vehicle is registered and the last day of the month preceding the anniversary of the requested registration period in the year designated on the motor vehicle's registration decal.

(b) The county treasurer shall determine fees imposed for a motor vehicle registered for a period between 13 and 24 months. All registration fees, fees in lieu of tax, or local option taxes or fees that are imposed on an annual basis must be prorated based on the number of months in the requested registration period.

(c) A motor vehicle registered under the provisions of 61-3-303(3)(b) may not be registered under this subsection (3).

(4) If a motor vehicle, trailer, semitrailer, or pole trailer is permanently registered under the provisions of this chapter, the registration is not subject to expiration unless the registered owner of the motor vehicle, trailer, semitrailer, or pole trailer transfers ownership of the vehicle to another person."

**Section 58.** 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 (18):

(2) (a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):

(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(iii) a light vehicle registered under 61-3-456.

(c) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.

(d) The annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

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

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

(iii) if the vehicle is 11 or more years old, \$28;

(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.

(3) (a) Except as provided in subsection (3)(c), the owner of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of \$61.25.

(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of \$148.25.

(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.

(4) The annual registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:

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

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

(5) (a) The registration fee for off-highway vehicles is \$61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.

(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

(i) the name and home mailing address of the owner;

(ii) the certificate of title number;

(iii) the name of the manufacturer of the off-highway vehicle;

(iv) the model number or name;

(v) the year of manufacture;

(vi) a statement evidencing payment of the *registration fee in lieu of property tax*; and

(vii) other information that the department may require.

(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

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

(7) (a) The owner of a motor home shall pay an annual fee based on the age of the motor home according to the following schedule:

(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) (i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the *registration fee in lieu of tax*.

(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

(A) a fee of \$237.50; and

(B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.

(8) (a) The registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the 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 \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, 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.

(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(9) (a) The registration fee for travel trailers under 16 feet in length is \$72 and the registration fee for travel trailers 16 feet in length or longer is \$152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.

(10) (a) The owner of each motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat,

sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee as follows:

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

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

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

(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.

(11) (a) Except as provided in subsection (11)(b), the one-time registration fee for a snowmobile is \$60.50.

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

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

(ii) if the business reregisters the snowmobile for a second year, a fee of \$20. If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the *registration fee in lieu of tax* imposed in subsection (11)(a).

(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.

(12) A fee of \$5 must be collected when a new set of standard license plates or a new single standard license plate provided for under 61-3-332 is issued.

(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.

(14) When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;

(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:

(i) if the vehicle is 4 years old or less, \$195.75;

(ii) if the vehicle is 5 years old through 10 years old, \$65.75; and

(iii) if the vehicle is 11 years old or older, \$6.75;

(c) motor homes:

(i) less than 2 years old, \$250.50;

(ii) 2 years old and less than 5 years old, \$192.25;

(iii) 5 years old and less than 8 years old, \$100.50; and

(iv) 8 years old and older, \$65.50;

(d) motorcycles and quadricycles registered for use on the public highways, \$42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, \$103.25. This fee is a one-time fee, except upon transfer of ownership.

(e) travel trailers under 16 feet in length, \$50.50, and travel trailers 16 feet in length or longer, \$130.50. This fee is a one-time fee, except upon transfer of ownership.

(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, \$52. This fee is a one-time fee, except upon transfer of ownership.

(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, \$139. This fee is a one-time fee, except upon transfer of ownership.

(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 for licensing pursuant to 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 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 59.** Section 61-3-461, MCA, is amended to read:

“**61-3-461. Short title.** Sections 61-3-461 through ~~61-3-467~~ 61-3-468 may be cited as the “Montana Collegiate License Plates Act”.”

**Section 60.** Section 61-3-462, MCA, is amended to read:

“**61-3-462. Definitions.** As used in 61-3-461 through ~~61-3-467~~ 61-3-468, the following definitions apply:



(1) "Collegiate license plates" means license plates bearing the colors, numerals, letters, and insignia provided in 61-3-463 and issued as provided in 61-3-464 through 61-3-466.

(2) "Institution" means:

- (a) a unit of the Montana university system as designated in 20-25-201;
- (b) a community college district as defined in 20-15-101; or

(c) a college or university located in Montana and accredited by a national or regional accrediting association for institutions of higher learning to grant baccalaureate degrees."

**Section 61.** Section 61-3-721, MCA, is amended to read:

**"61-3-721. Proportional registration of motor fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates.** (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to motor vehicle, trailer, semitrailer, or pole trailer registration that is required by the department of transportation. If an electronic record of title has not been created for or a certificate of title issued for an apportionable vehicle in the fleet, the department of transportation, as an authorized agent of the department of justice, may also process the application for certificate of title for the vehicle as provided in 61-3-203 and 61-3-217.

(2) Except as provided in 61-3-318(1) and subsection (6) of this section, each fleet subject to the provisions of 61-3-711 through 61-3-733 must be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31.....1st period
- (b) April 1 through June 30 .....2nd period
- (c) July 1 through September 30 .....3rd period
- (d) October 1 through December 31 .....4th period

(4) Registration of a fleet of apportionable motor vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable motor vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement, arrangement, or declaration entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each motor vehicle, trailer, semitrailer, or pole trailer in the fleet for which registration is

requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) Upon renewal or new registration, each trailer, semitrailer, or pole trailer fleet must be permanently registered and assessed a registration fee of \$82.50. Each trailer, semitrailer, or pole trailer in the fleet must be issued a permanent license plate and ~~sticker~~ *registration decal*.

(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer, semitrailer, or pole trailer.

(8) If the owner of a fleet removes a trailer, semitrailer, or pole trailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer, semitrailer, or pole trailer to the department of transportation. The owner may not transfer the license plate and ~~sticker~~ *registration decal* to a trailer, semitrailer, or pole trailer that is added to the fleet.

(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.

(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due.”

**Section 62.** Section 61-4-109, MCA, is amended to read:

**“61-4-109. Privileges incident to license — withdrawal upon certain conditions.** (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle held for sale by the dealer and to issue a ~~20-day~~ *temporary registration* permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a motor vehicle by the dealer are specifically conditioned on the dealer’s satisfaction of the bond requirements of 61-4-101(7) and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer’s bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and ~~20-day~~ *temporary registration* permits assigned or issued to the dealer are subject to immediate withdrawal and confiscation, upon demand, by the department or by a compliance specialist on behalf of the department and may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer’s business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer’s license under 61-4-105(2).”

**Section 63.** Section 61-5-121, MCA, is amended to read:

**“61-5-121. Disposition of fees.** (1) Except as provided in subsection (3), the disposition of the fees from driver’s licenses, motorcycle endorsements, commercial driver’s licenses, and replacement driver’s licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee, 18.25% of each commercial driver's license fee, and 25% of each replacement driver's license fee must be deposited into an account in the state special revenue fund. Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% of each commercial driver's license fee, and 3.75% of each replacement driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee, 16.94% of each commercial driver's license fee, and 8.75% of each replacement driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee must be deposited into the state general fund.

(f) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit all remaining fees to the state for deposit as provided in subsections (1)(a) and (1)(d) through (1)(f).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses are collected by the department, it shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(f).

(3) The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund."

**Section 64.** Section 61-8-715, MCA, is amended to read:

**"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty.** (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b) or convicted of reckless endangerment of a highway worker under 61-8-301(4) shall be

punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. ~~Section 61-8-351(8) does not apply to a prosecution under 61-8-301(1)(b) that is punishable under this subsection.~~

**Section 65.** Section 76-9-103, MCA, is amended to read:

**“76-9-103. Planning — effect on shooting ranges.** The laws of this state concerning planning, master plans, or comprehensive plans or growth policies, as defined in 76-1-103, may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but ~~it~~ *the ordinance, resolution, or rule* may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.”

**Section 66.** Section 76-14-103, MCA, is amended to read:

**“76-14-103. Definitions.** As used in this part, the following definitions apply:

(1) “Committee” means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) “Department” means the department of natural resources and conservation.

~~(3) “Grazeable woodlands” means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.~~

~~(4)~~(3) “Montana rangeland resource program” means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

~~(5)~~(4) “Person” means any individual or association, partnership, corporation, or other business entity.

~~(6)~~(5) “Range condition” means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

~~(7)~~(6) “Range management” means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

~~(8)~~(7) “Rangeland” means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(9)(8) “State coordinator” means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10)(9) “Tame ~~pasture~~ *pastureland*” means land that has been modified by mechanical cultivation and ~~whose that has~~ *current vegetation consists* consisting of native or introduced species, or both.

(11)(10) “Users of rangeland” means all persons, including but not limited to ranchers, farmers, ~~sportsmen~~ *hunters, anglers*, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.”

**Section 67.** Section 76-15-302, MCA, is amended to read:

**“76-15-302. Nominations for supervisor.** (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the ~~registrar~~ *election administrator*, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the ~~registrar~~ *election administrator* unless it is ~~submitted~~ *signed* by 10 or more qualified electors within the boundaries of the district ~~wherein~~ *in which* the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than twice the number of candidates are nominated than the number to be elected at the general election, the ~~registrar~~ *election administrator* shall give due notice of a nominating election to be held for the selection of candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election.”

**Section 68.** Section 82-4-127, MCA, is amended to read:

**“82-4-127. Effect of siting permit on subsequent mining permits.** When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion ~~thereof of the area~~ on the grounds listed in 82-4-227(2) and (4) (7), ~~it shall so state in a written statement the department shall provide written notification to the operator that the department has enough information to approve or disapprove the application.~~ *This* ~~The~~ decision is binding on the department with regard to strip-mining or underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter ~~which that~~ indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation, ~~develops because of strip-mining or underground-mining operations~~ which was not in existence at the time of the issuance of a permit under this part, ~~develops because of strip mining or underground mining operations.~~”

**Section 69.** Section 82-4-222, MCA, is amended to read:

**“82-4-222. Permit application — application revisions.** (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect

thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an

underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime; *and* quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan; and

(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through ~~(2)(q)~~ (2)(n). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the



area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

(7) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

(8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

**Section 70.** Section 85-2-225, MCA, is amended to read:

**“85-2-225. Filing fee — processing fee for remitted claims.** (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) a filing fee is not required ~~accompanying~~ *to accompany* a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion of the decree.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of \$40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.

(3) (a) ~~Except as provided in subsection (3)(c), in~~ *In* addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of \$150, which must be deposited in the general fund.

(b) The water judge shall assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection, ~~which and the~~ *assessment* must be deposited in the general fund.”

**Section 71.** Section 85-2-350, MCA, is amended to read:

**“85-2-350. Clark Fork River basin task force — duties — water management plan.** (1) The governor’s office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government ~~must have~~ *has* the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the environmental quality council annually; and

(iii) the *appropriations subcommittee that deals with natural resources and commerce* ~~appropriations subcommittee~~ each legislative session.”

**Section 72.** Section 87-5-704, MCA, is amended to read:

**“87-5-704. Rulemaking.** (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement 87-5-705 through 87-5-709 and 87-5-712 regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708.

(4) (a) The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2), including the establishment of a reasonable fee for the permit.

~~(b) The department may adopt rules regarding the amnesty program provided for in 87-5-709(2)."~~

**Section 73.** Section 14, Chapter 464, Laws of 2005, is amended to read:

**"Section 14. Termination.** The amendments to 19-6-709, *the insertion of the reference to [section 1] in 17-7-502*, and [section 1] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709."

**Section 74.** Section 5, Chapter 535, Laws of 2005, is amended to read:

**"Section 5. Contingent termination.** The voluntary income tax checkoff created in [section 1] ~~terminates and the end-stage renal disease program account in [section 2] terminate~~ on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than \$10,000 in each of those 2 tax years."

**Section 75. Directions to code commissioner.** The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 60th legislature.

Approved March 22, 2007

## CHAPTER NO. 45

[HB 20]

AN ACT PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR ENFORCEMENT OF ALL WATER RIGHTS; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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) ~~In the Upper Clark Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.~~

~~(2) (a) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable costs and attorney fees.~~

~~(b) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable costs and attorney fees.~~

~~(3)(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. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Approved March 27, 2007

## CHAPTER NO. 46

[HB 43]

AN ACT REVISING LAWS GOVERNING CANCELED AND DUPLICATE STATE WARRANTS; REVISING TERMS; ELIMINATING EXCEPTIONS FOR INDEMNIFICATION FOR REPLACEMENT WARRANTS; AND AMENDING SECTIONS 2-18-411, 17-8-303, 17-8-306, AND 39-3-213, MCA.

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

**Section 1.** Section 2-18-411, MCA, is amended to read:

**“2-18-411. Lost warrants — ~~duplicate replacement~~.** (1) Upon receipt of proof satisfactory to the treasurer that a payroll warrant issued by the state treasurer has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state treasurer shall, upon certification by the payee’s appointing power, issue a ~~duplicate replacement~~ warrant in payment of the same amount without requiring a bond from the payee. Any loss incurred in connection with the warrant must be charged against the account from which the payment was derived.

(2) A payroll warrant is considered to have been lost if it has been sent to the payee but not received by the payee within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee or for forwarding to another state officer or employee for delivery and has not been received within a reasonable time.”

**Section 2.** Section 17-8-303, MCA, is amended to read:

**“17-8-303. Warrants — presentation and cancellation.** (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as ~~canceled stale-dated~~ and the amount must be credited to a separate private purpose trust fund account administered by the treasurer. If the payee or legal owner of a ~~canceled stale-dated~~ warrant presents it for payment or presents a claim for payment within 4 years from the date of issue, the state

treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the ~~canceled~~ *stale-dated* warrant.

(3) Three years and 6 months after ~~cancellation~~ *being stale-dated*, the warrant must be classed as unclaimed property subject to the provisions of Title 70, chapter 9, part 8. If the payee or legal owner of a ~~canceled~~ *stale-dated* warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in 70-9-815.”

**Section 3.** Section 17-8-306, MCA, is amended to read:

**“17-8-306. Issuance of duplicate replacement warrant.** (1) The state treasurer may issue a ~~duplicate~~ *replacement* warrant whenever any warrant drawn by the state is lost or destroyed. This ~~duplicate~~ *replacement* warrant must be in the same form as the original, ~~except that it must have plainly printed across its face the word “duplicate”.~~

(2) Whenever a ~~duplicate~~ *replacement* warrant is issued, the state treasurer ~~may~~ *shall* place a stop-payment order on the original warrant.

(3) Whenever the owner or custodian applies for the issuance of a ~~duplicate~~ *replacement* warrant, the application must include an agreement to indemnify ~~and hold harmless~~ the state and its officers and employees from any loss resulting from the issuance of a ~~duplicate~~ *replacement* warrant. ~~An indemnity agreement is not required if:~~

(a) the payee is:

(i) the United States government;

(ii) a state of the United States;

(iii) any agency, instrumentality, or officer of the United States government or of a state, county, city, consolidated government, town, district, or other political subdivision of a state or any officer thereof; or

(b) the owner or custodian is the state of Montana or any agency or officer of the state.

(4) Any loss incurred in connection with the issuance of a ~~duplicate~~ *replacement* warrant must be charged against the account from which the payment was derived.”

**Section 4.** Section 39-3-213, MCA, is amended to read:

**“39-3-213. Disposition of wages.** (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the wage collection fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not bear interest. The wage collection fund is an agency fund as provided in 17-2-102(3)(d). The payment of wages collected may be made by means of state warrants.

(2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer ~~for cancellation~~ *to be stale-dated* in accordance with 17-8-303.”

Approved March 27, 2007

## CHAPTER NO. 47

[HB 62]

AN ACT PROVIDING THAT VACATION LEAVE MAY BE DONATED TO A NONREFUNDABLE SICK LEAVE FUND; PROVIDING THAT DONATED VACATION LEAVE IS NOT ELIGIBLE FOR CASH COMPENSATION UPON TERMINATION; AMENDING SECTIONS 2-18-617 AND 2-18-618, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-18-617, MCA, is amended to read:

**“2-18-617. Accumulation of leave — cash for unused — transfer.**

(1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611. *Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is not eligible for cash compensation upon termination.*

(3) ~~However,~~ *if* an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) *An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.*

(4)(5) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy.”

**Section 2.** Section 2-18-618, MCA, is amended to read:

**“2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of

working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave *or accumulated vacation leave* to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave *or vacation leave*."

**Section 3. Effective date.** [This act] is effective July 1, 2007.

Approved March 27, 2007



**CHAPTER NO. 48**

[HB 65]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF \$100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Inspection of construction sites — public policy — penalty.** (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

- (i) a boiler permit;
- (ii) a building permit;
- (iii) an electrical permit;
- (iv) an elevator permit;
- (v) a mechanical permit; or
- (vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

**Section 2. Reimbursement of subsequent injury fund — effect on claims experience rating.** An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

**Section 3.** Section 39-71-225, MCA, is amended to read:

**"39-71-225. Workers' compensation database system.** (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; ~~and~~.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; *and*

*(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.*

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

**Section 4.** Section 39-71-503, MCA, is amended to read:

**"39-71-503. Uninsured employers' fund — purpose and administration of fund — maintaining balance for administrative costs — appropriation.** (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) *The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed \$100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.*

(4) ~~The amounts necessary for the administration of the fund and for the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund.~~

**Section 5.** Section 39-71-508, MCA, is amended to read:

**“39-71-508. Coordination of remedies — limitation of liability of employee to third-party providers — rights of third-party providers.** (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

(1)(a) a claim for benefits from the uninsured employers' fund;

(2)(b) a damage action against the employer in accordance with 39-71-509;

(3)(c) an independent action against an employer as provided in 39-71-515;

or

(4)(d) any other civil remedy provided by law.

(2) *An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.*

(3) *A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund.”*

**Section 6.** Section 39-71-510, MCA, is amended to read:

**“39-71-510. Limitation on benefit entitlement under fund.** (1) Notwithstanding the provisions of 39-71-407, and 39-71-503, and subsection (2) of this section, injured employees or an employee’s beneficiaries who pursue a claim for benefits from the uninsured employers’ fund are not granted an entitlement by this state for full workers’ compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums money in the fund. If the department determines at any time that the sums money in the fund are is not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) *The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of \$100,000.”*

**Section 7.** Section 39-71-907, MCA, is amended to read:

**“39-71-907. Certified person with a disability to be compensated for injury as provided by chapter — insurer liability for compensation limited.** (1) A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person’s beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) *The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectible in the next assessment period pursuant to 39-71-915.”*

**Section 8.** Section 39-71-915, MCA, is amended to read:

**“39-71-915. Assessment of insurer — employers — definition — collection.** (1) As used in this section, “paid losses” means the following benefits paid during the preceding calendar year for injuries covered by the Workers’ Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate

share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the

amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than \$200,000 \$500,000 for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

**Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

**Section 10. Effective date.** [This act] is effective July 1, 2007.

**Section 11. Applicability.** [Sections 4 and 6] apply to injuries and occupational diseases occurring on or after July 1, 2007.

Approved March 27, 2007

## CHAPTER NO. 49

[HB 84]

AN ACT CLARIFYING THE JURISDICTION OF COURTS CONCERNING MISDEMEANOR CRIMINAL ACTIONS PROSECUTED UNDER THE MONTANA ALCOHOLIC BEVERAGE CODE; AND AMENDING SECTION 16-6-201, MCA.

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

**Section 1.** Section 16-6-201, MCA, is amended to read:

**"16-6-201. Jurisdiction of courts.** (1) As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under ~~this code~~ *the Montana Alcoholic Beverage Code described in 16-1-101.*

(2) *The jurisdiction provided for in subsection (1) is in addition to the jurisdiction of:*

- (a) *justices' courts, as provided in 3-10-303;*
- (b) *municipal courts, as provided in 3-6-103; and*
- (c) *city courts, as provided in 3-11-102."*

Approved March 27, 2007

## CHAPTER NO. 50

[HB 90]

AN ACT INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM; EXTENDING BY 5 YEARS THE TERM OF THE LOAN AND THE TEMPORARY INCREASE IN FEES FOR SECURITY INTEREST FILINGS AND CERTIFICATES OF TITLE TO REPAY THE LOAN; APPROPRIATING AN ADDITIONAL \$6 MILLION FROM THE CAPITAL PROJECTS FUND TO THE DEPARTMENT OF JUSTICE FOR THE INFORMATION TECHNOLOGY SYSTEM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 17-5-1608, 17-5-2001, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA; REPEALING SECTION 15, CHAPTER 562, LAWS OF 2003, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 17-5-1608, MCA, is amended to read:

**"17-5-1608. Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~\$120~~ \$126 million."

**Section 2.** Section 17-5-2001, MCA, is amended to read:

**"17-5-2001. (Temporary) Loans to state agencies.** (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an



amount not to exceed ~~§22-5~~ \$28.5 million, payable over a term not to exceed ~~10~~ 15 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

~~(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.~~

~~(b) The loan is payable from the department of justice's annual appropriation from the general fund.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.~~

~~(d) The loan is subject to the risk of nonappropriation.~~

~~(4) (a)(3) (a) If bonds are not issued for the project authorized in 15-1-140, the department of revenue is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$17 million, payable over a term not to exceed 7 years, for the acquisition of a replacement system for the process oriented integrated system (POINTS) computer system.~~

~~(b) The loan is payable from the department of revenue's appropriation.~~

~~(c) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2011—sec. 18, Ch. 597, L. 2003.)~~

**17-5-2001. (Effective July 1, 2011) Loans to state agencies.** (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an

amount not to exceed ~~§22.5~~ \$28.5 million, payable over a term not to exceed ~~10~~ 15 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

~~(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.~~

~~(b) The loan is payable from the department of justice's annual appropriation from the general fund.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.~~

~~(d) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2013 — sec. 15, Ch. 562, L. 2003.)~~

**17-5-2001. (Effective July 1, 2013) Loans to state agencies.** (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

~~(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$4.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.~~

~~(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle~~

~~information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.~~

~~(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.~~

~~(b) The loan is payable from the department of justice's annual appropriation from the general fund.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.~~

~~(d) The loan is subject to the risk of nonappropriation."~~

**Section 3.** Section 61-3-103, MCA, is amended to read:

**"61-3-103. Filing of security interests — perfection — rights — procedure — fees.** (1) (a) Except as provided in subsection (2), the department, its authorized agent, or a county treasurer shall, upon payment of the fee required by subsection (8), enter a voluntary security interest or lien against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile upon receipt of a written acknowledgment by a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner of a voluntary security interest or lien on a form required by the department. The entry may be made if:

(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or

(ii) a transfer of ownership is not sought.

(b) After the voluntary security interest or lien has been entered on the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.

(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(d) Unless a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department may not record a voluntary security interest or lien on the face of a certificate of title.

(2) A security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile held as inventory by a dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is subject to two security interests previously perfected under this section and the applicant has requested issuance of a certificate of title under 61-3-201, the department shall endorse on the face of the certificate of title, "NOTICE. This vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests is not required to be endorsed on the certificate.

(4) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(5) A secured party or lienholder who has a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and who fails to file a satisfaction of the security interest or lien within 21 days after receiving final payment is required to pay the department \$25 for each day that the secured party or lienholder fails to file the satisfaction.

(6) Within 24 hours after receiving notice of any involuntary liens or attachments against the record of any motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile registered in this state, the department shall mail to the owner or any secured party or lienholder of record a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.

(b) If a secured party assigns all or part of the party's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records.

(8) (a) A fee must be paid to the department to file any security interest or other lien against a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The fee covers the cost of entering and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title.

(b) Beginning January 1, 2002, and ending June 30, ~~2011~~ 2016, the fee is \$8. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with

15-1-504. The remaining \$4 must be forwarded to the state for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2011 2016, the fee is \$4 and must be deposited in the state general fund.

(9) (a) ~~Until June 30, 2018,~~ a fee of \$10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. *Beginning July 1, 2018, the fee for a new certificate of title under this subsection is \$5.*

(b) ~~The~~ *Until June 30, 2018,* the \$10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(c) *Beginning July 1, 2018, the \$5 fee must be deposited in the state general fund. (Subsection (9) terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.)*

**Section 4.** Section 61-3-203, MCA, is amended to read:

**“61-3-203. Fee for original certificate of title — disposition.** (1) A (a) *Until June 30, 2018,* a person applying for a certificate of title shall pay the department, its authorized agent, or a county treasurer a fee of:

(a)(i) \$10 if the vehicle for which a certificate of title is sought is not a light vehicle or a truck or bus that weighs less than 1 ton; or

(b)(ii) \$12 if the vehicle for which application is made is a light vehicle or a truck or bus that weighs less than 1 ton.

(2)(b) The amount of \$5 of the fee imposed pursuant to subsection (1)(a) must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550, and the remaining amount must be deposited in the state general fund.

(2) *Beginning July 1, 2018, the fee imposed in subsection (1)(a)(i) is \$5 and the fee imposed in subsection (1)(a)(ii) is \$7 and all fees paid pursuant to this section must be deposited in the state general fund.”*

**Section 5.** Section 61-3-204, MCA, is amended to read:

**“61-3-204. Replacement certificate of title — application.** (1) (a) If a certificate of title is lost, stolen, destroyed, mutilated, or becomes illegible or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information, the owner, as shown on the electronic record of title, may apply for and request the department to issue a replacement certificate of title. The application must include satisfactory evidence of the facts requiring the replacement certificate of title and be accompanied by a fee of \$10.

(b) ~~Of the \$10 fee~~ *Until June 30, 2018,* \$5 of the fee must be deposited in the state general fund in accordance with 15-1-504, and the remaining \$5 must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(c) *Beginning July 1, 2018, the fee for a replacement certificate of title is \$5 and the entire fee must be deposited in the state general fund.*

(2) Each replacement certificate of title issued by the department must contain the following statement: “This replacement voids any previously issued title.”

**Section 6.** Section 61-3-550, MCA, is amended to read:

**“61-3-550. (Temporary) Motor vehicle information technology system account.** (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.

(2) (a) *Until June 30, 2016, \$4 of the fee received by the department pursuant to 61-3-103(8) for a security interest or other lien must be deposited in the account.*

(b) *Fees Until June 30, 2018, fees received by the department pursuant to ~~61-3-103~~ 61-3-103(9) and \$5 of each fee received under 61-3-203 or 61-3-204 for a certificate of title must be deposited in the account.*

(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:

(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or

(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system. (~~Terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.~~)

~~**61-3-550. (Effective July 1, 2013) Motor vehicle information technology system account.** (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.~~

~~(2) Fees received by the department of revenue pursuant to 61-3-103 must be deposited in the account.~~

~~(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:~~

~~(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or~~

~~(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system.”~~

**Section 7. Appropriation.** There is appropriated from the capital projects fund to the department of justice \$6 million for the motor vehicle information technology system described in 17-5-2001.

**Section 8. Repealer.** Section 15, Chapter 562, Laws of 2003, is repealed.

**Section 9. Two-thirds vote required.** Because [section 2] increases the amount that the department of justice can borrow from the board of investments to finance the cost of the motor vehicle technology system, authorizing the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 10. Effective date.** [This act] is effective July 1, 2007.

Approved March 27, 2007

## CHAPTER NO. 51

[HB 94]

AN ACT REVISING THE UNDERGROUND STORAGE TANK ADMINISTRATIVE PENALTY LAWS; ELIMINATING DEPARTMENT OF ENVIRONMENTAL QUALITY RULEMAKING AUTHORITY FOR A PENALTY SCHEDULE; MODIFYING THE ADMINISTRATIVE PENALTY NOTICE REQUIREMENTS; ALLOWING A PERSON ASSESSED A PENALTY TO REQUEST A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW INSTEAD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A FIXED SCHEDULE OF MAXIMUM AND MINIMUM PENALTIES FOR SPECIFIC VIOLATIONS; AMENDING SECTIONS 75-11-505, 75-11-512, AND 75-11-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-11-505, MCA, is amended to read:

**“75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

- (1) reporting by owners and operators;
- (2) financial responsibility;
- (3) release detection, prevention, and corrective action;
- (4) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
- (5) standards for design, construction, installation, and closure;
- (6) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
- (7) ~~a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525;~~ and
- (8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.”

**Section 2.** Section 75-11-512, MCA, is amended to read:

**“75-11-512. Administrative enforcement.** (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator’s agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes

final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing receipt.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

(c) assess administrative penalties and issue corrective action orders under 75-11-525.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.

(6) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

**Section 3.** Section 75-11-525, MCA, is amended to read:

**"75-11-525. Administrative penalties for violations — appeals — venue.** (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may



be made in conjunction with any order or other administrative action authorized by this chapter.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt ~~receipt~~. The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under this section;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;
- (f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid; *and*
- (g) the right to appeal or to a hearing to mitigate the penalty assessed ~~and the time, place, and nature of any hearing;~~ *and*
- ~~(h) that a formal proceeding may be waived.~~

~~(3) The department shall provide each~~ A person assessed a penalty under this section ~~an opportunity for~~ *may request* a hearing *before the board* to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred. ~~This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

- ~~(a) the provision allegedly violated;~~
- ~~(b) the facts that constitute the alleged violation;~~
- ~~(c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and~~
- ~~(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.~~

~~(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and~~

~~whether significant harm resulted to the public health or the environment from the violation.~~

~~(5)(4)~~ If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

~~(6)(5)~~ Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

~~(7)(6)~~ Administrative penalties collected under this section must be deposited in the state general fund.”

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Approved March 27, 2007

## CHAPTER NO. 52

[HB 111]

AN ACT REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE TREATMENT OF LIMITED LIABILITY COMPANIES; DEFINING THE TERM “LICENSED AND PRACTICING HEALTH CARE PROVIDER”; CLARIFYING EMERGENCY PROVISIONS; REMOVING BONDING REQUIREMENTS; CLARIFYING PROVISIONS FOR TAX APPEALS; RELIEVING CERTAIN EMPLOYERS OF BENEFIT CHARGES ASSOCIATED WITH REHIRING RETURNING MILITARY PERSONNEL; REVISING CONTRIBUTION RATE SCHEDULES; REVISING DISABILITY DISQUALIFICATION; REVISING THE FORMULA FOR EXTENDED BENEFIT AMOUNTS; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-204, 39-51-301, 39-51-405, 39-51-406, 39-51-1105, 39-51-1109, 39-51-1214, 39-51-1218, 39-51-2302, 39-51-2304, 39-51-2306, AND 39-51-2510, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Treatment of limited liability companies.** For the purposes of this chapter, a limited liability company is treated as follows:

- (1) as a sole proprietorship if it is a single-member limited liability company;
- (2) as a partnership if it consists of more than a single member and it is not established as a corporation pursuant to the provisions of the Internal Revenue Code for income tax purposes; or
- (3) as a corporation if it is classified as a corporation for income tax purposes pursuant to the Internal Revenue Code.

**Section 2.** Section 39-51-201, MCA, is amended to read:

**“39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) “Annual payroll” means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) “Base period” means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual’s benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual’s disability was incurred.

(3) “Benefit year”, with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) “Benefits” means the money payments payable to an individual, as provided in this chapter, with respect to the individual’s unemployment.

(5) “Board” means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) “Calendar quarter” means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) “Contributions” means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

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

(9) (a) “Domestic or household service” means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer’s family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) “Employing unit” means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee’s successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except

as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "*Licensed and practicing health care provider*" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(18)(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19)(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20)(21) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21)(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(22)(23) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23)(24) (a) "Wages", unless specifically exempted under subsection (23)(b) (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(24)(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25)(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

**Section 3.** Section 39-51-203, MCA, is amended to read:

**"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a ~~manager-managed~~ limited liability company ~~that has filed with the secretary of state~~ *treated as a corporation pursuant to [section 1]*, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and outside this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term “employment” includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term “employment” includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term “employment” includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term “employment” includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state’s law, if:

(i) the employer’s principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation that is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service under the law of this state.

(b) An “American employer”, for purposes of this subsection (7), means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.”

**Section 4.** Section 39-51-204, MCA, is amended to read:

**“39-51-204. Exclusions from definition of employment.** (1) The term “employment” does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has

domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.



(g) service performed by sole proprietors, working members of a partnership, members of a ~~member-managed~~ limited liability company ~~that has filed with the secretary of state~~ *treated as a partnership or sole proprietorship pursuant to [section 1]*, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

**Section 5.** Section 39-51-301, MCA, is amended to read:

**“39-51-301. Administration — duties and powers of department — emergency provisions.** (1) It is the duty of the department to administer this chapter ~~and it.~~ *The department* may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates ~~will become~~ *is* necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) (a) *In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:*

(i) *the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and*

(ii) *the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.*

(b) *In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.*

(5)(6) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(6)(7) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(7)(8) (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(8)(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor.”

**Section 6.** Section 39-51-405, MCA, is amended to read:

**“39-51-405. Signatures required on warrants.** All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of ~~a member of the department or its duly authorized agent for that purpose~~ the commissioner of labor and industry or an agent authorized for that purpose.”

**Section 7.** Section 39-51-406, MCA, is amended to read:

**“39-51-406. Unemployment insurance administration account.** (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited,

appropriated, or paid into this account is appropriated and made available to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, (42 U.S.C. 502), must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, (42 U.S.C. 502), as amended; *and*

~~(b) all money appropriated by the state from the general fund for the purpose of administering this chapter; and~~

(e)(b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency of the United States;

(ii) this state or any agency of the state;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

~~(v) any other source for administrative expense and purpose.~~

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

~~(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for the bond must be paid from the money in the unemployment insurance administration account.~~

~~(7)(6)~~ Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund."

**Section 8.** Section 39-51-1105, MCA, is amended to read:

**~~"39-51-1105. Liability of corporate officers for taxes, penalties, and interest owed by corporation.~~** (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) ~~In the case of a corporate bankruptcy, the~~ *The liability of the imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge of penalty and interest against the corporation cannot be granted under 11 U.S.C. 727. The individual is liable for any the unpaid amount of taxes, penalties, and interest unpaid by the corporation.*

(4) ~~For determining In the case of a limited liability company treated as a partnership pursuant to [section 1], the liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending jointly and severally to each member.~~

(5) ~~For determining In the case of a limited liability company that is not treated as a partnership pursuant to [section 1], liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, extends jointly and severally to the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed."~~

**Section 9.** Section 39-51-1109, MCA, is amended to read:

**"39-51-1109. Tax appeals — procedure.** (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, *the charging of benefit payments to employers*, or other contribution-related issues must be issued by the department and is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as provided in 39-51-2403 through 39-51-2410."

**Section 10.** Section 39-51-1214, MCA, is amended to read:

**“39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant’s base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant’s base period.

(2) A charge may not be made to the account of a covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307; or

(e) if the base period employer is ordered to military service, as defined in 10-1-1003; or

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10.”

**Section 11.** Section 39-51-1218, MCA, is amended to read:

**“39-51-1218. Rate schedules.**

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27

Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0135)	(.0095)	(.0075)	(.0050)	( <del>...</del> ) (.0025)	(...)
2.17	2.37	2.57	2.77	2.97	3.17

Contribution Rates for Eligible Employers

0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47

Contribution Rates for Deficit Employers

3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37"

**Section 12.** Section 39-51-2302, MCA, is amended to read:



**“39-51-2302. Disqualification for leaving work without good cause.**

(1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual’s employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing ~~physician~~ *health care provider* and, after recovering from the illness or injury when recovery is certified by a licensed and practicing ~~physician~~ *health care provider*, the individual returned to and offered service to the individual’s employer and the individual’s regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual’s regular employer if upon leaving the temporary work the individual returned immediately to work for the individual’s regular employer, provided that the individual is unemployed for nondisqualifying reasons; or

(c) employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual’s prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer’s account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual’s weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204.”

**Section 13.** Section 39-51-2304, MCA, is amended to read:

**“39-51-2304. Disqualification for failure to apply for or to accept suitable work.** (1) (a) An individual is disqualified for benefits if the individual fails without good cause ~~either~~ to:

(i) apply for available and suitable work when directed to do so by the employment office or the department ~~or to~~;

(ii) accept an offer *from a former employer or a new employer* of suitable work ~~which~~ *that* the individual is physically able and mentally qualified to perform; or ~~to~~

(iii) return to customary self-employment, if any, when directed to do so by the department.

(b) The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual’s weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual’s maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances. The services must constitute employment as defined in 39-51-203 and 39-51-204.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

- (a) the degree of risk involved to the individual's health, safety, and morals;
- (b) the individual's physical fitness and prior training;
- (c) the individual's experience and previous earnings;
- (d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and
- (e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may *not* be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. No *An* individual, however, is *not* required to accept a job paying less than the federal minimum wage."

**Section 14.** Section 39-51-2306, MCA, is amended to read:

**"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits.** (1) ~~Effective April 1, 1977, an An~~ individual ~~shall be is~~ disqualified for benefits for any week with respect to which ~~he is receiving or has received~~ *the individual receives* payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States ~~or under the social security disability law~~. However, when an injured claimant ~~has ceased~~ *ceases* to draw compensation benefits and ~~shall have returned~~ *returns* to the labor market, ~~he the claimant shall then be is~~ entitled to receive unemployment compensation benefits under this chapter if ~~he shall be the claimant is~~ otherwise qualified. Compensation ~~which is~~ received as a payment for a permanent partial disability ~~shall may~~ not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter; ~~provided if~~ the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 351, *et seq.*, or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual ~~is receiving or has received~~ *receives* benefits under an unemployment compensation law of another state or of the United States if ~~such the~~ benefits are paid pursuant to 39-51-504.

(2) ~~Receipt of any~~ *If an individual receives* wages, compensation, or benefits as set forth in subsection (1) ~~of this section~~ after payment of unemployment benefits and with respect to the same week for which unemployment benefits

were received will thereupon require such individual to, *the individual shall repay such the* unemployment benefits, and the department may collect *such the* unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.”

**Section 15.** Section 39-51-2510, MCA, is amended to read:

**“39-51-2510. Total extended benefit amount.** The total extended benefit amount payable to ~~any~~ *an* eligible individual with respect to ~~his~~ *that individual’s* applicable benefit year ~~shall~~ *must* be the least of the following amounts:

(1) 50% of the total amount of regular benefits ~~which~~ *that* were payable to ~~him~~ *the individual* under this chapter in ~~his~~ *the individual’s* applicable benefit year;

(2) 13 times ~~his~~ *the individual’s* weekly benefit amount ~~which~~ *that* was payable to ~~him~~ *the individual* under this chapter for a week of total unemployment in the *individual’s* applicable benefit year; or

(3) *39 times the individual’s weekly benefit amount, less the amount of regular benefits paid or considered paid during the individual’s applicable benefit year.”*

**Section 16. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

**Section 17. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, part 2, and the provisions of Title 39, chapter 51, part 2, apply to [section 1].

**Section 18. Effective dates.** (1) [Sections 10, 16, and 17 and this section] are effective July 1, 2007.

(2) [Sections 2, 5 through 7, 9, and 11 through 15] are effective October 1, 2007.

(3) [Sections 1, 3, 4, and 8] are effective January 1, 2008.

Approved March 27, 2007

## CHAPTER NO. 53

[HB 143]

AN ACT REVISING THE QUARTERLY REPORTING REQUIREMENT LAWS FOR MOTOR VEHICLE WRECKING FACILITIES; TRANSFERRING FROM THE MOTOR VEHICLE WRECKING LAWS TO THE MOTOR VEHICLE LAWS ENFORCEMENT OF THE REQUIREMENT THAT MOTOR VEHICLE WRECKING FACILITIES SEND QUARTERLY REPORTS TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 61-3-211, 61-12-402, 75-10-513, AND 75-10-541, MCA.

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

**Section 1.** Section 61-3-211, MCA, is amended to read:

**“61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements.** (1) An insurer acquiring ownership of a motor vehicle that is less than 5 years of age and that the insurer determines to be a salvage vehicle shall surrender the certificate of title to the

department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department. Upon receipt of the certificate of title from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of \$5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of ~~75-10-513(2)~~ [section 5].”

**Section 2.** Section 61-12-402, MCA, is amended to read:

**“61-12-402. Notice to owner.** (1) Within 72 hours after a vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle is being stored of where and when the vehicle was taken

into custody and of where the vehicle is being stored. In addition, the Montana highway patrol shall furnish the sheriff or the chief of police:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning the vehicle's ownership.

(2) The highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle was taken into custody of the location at which the vehicle is being stored if the vehicle was removed to a different county.

(3) The sheriff or the city police in the jurisdiction where the vehicle is being stored shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, lienholder, or person of the location of the vehicle.

(4) If the vehicle is registered in the office of the department, notice is considered to have been given when a certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(5) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle is being stored is sufficient to meet all requirements of notice pursuant to this part. The notice by publication may contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(6) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (3) through (5). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(7) (a) A vehicle found by law enforcement officials to be a junk vehicle, as defined by 75-10-501, and that has a value of \$500 or less may be directly submitted for disposal in accordance with the provisions of Title 75, chapter 10, part 5, upon a release given by the sheriff or the city police. The county representative designated to implement the county motor vehicle recycling and disposal program pursuant to 75-10-521 for the county where the vehicle is being stored shall determine the value of the vehicle. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. If the vehicle is being stored by a motor vehicle wrecking facility, the sheriff or the city police shall transmit the release to the motor vehicle wrecking facility and the facility shall consider the release to meet the requirements for records under *[section 5]* and 75-10-512 and ~~75-10-513~~. If the vehicle is being stored by a qualified tow truck

operator, as defined in 61-8-903, the sheriff or the city police shall transmit the release to the operator. Vehicles described in this section may be submitted for disposal without notice and without a required holding period.

(b) A licensed vehicle that otherwise meets the definition of a junk vehicle, as defined in 75-10-501, and that has a value of \$500 or less may be directly submitted for disposal as provided in subsection (7)(a)."

**Section 3.** Section 75-10-513, MCA, is amended to read:

**"75-10-513. Disposal of junk vehicles — records.** (1) *When If a person owning or operating a motor vehicle wrecking facility submits a junk vehicle to the disposal program, the vehicle is then the property of the state.*

~~(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of title is received for a junk vehicle on the list, that certificate of title must accompany the list. The department of justice shall issue a receipt for the certificate of title if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of title if the vehicle is rebuilt.~~

~~(3)(2) A person owning or operating a motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that person that are required by rules of the department."~~

**Section 4.** Section 75-10-541, MCA, is amended to read:

**"75-10-541. Injunction — action to collect civil penalty — authority of department of justice.** (1) The department may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) Upon request of the department, the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate.

(4) The department of justice, through the attorney general or the county attorney of the county in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542 for violations of 75-10-512 or 75-10-513(2) discovered during department of justice inspections."

**Section 5. Motor vehicle wrecking facility quarterly reports.** Quarterly, the owner or operator of a motor vehicle wrecking facility, as defined in 75-10-501, shall mail to the department, on a form approved by the department, a list of all junk vehicles, as defined in 75-10-501, received by the owner or operator of the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If the owner or operator of a motor vehicle wrecking facility received a certificate of title when the owner or operator of the facility received a junk vehicle on the list, that certificate of title must accompany the list. The department shall issue a

receipt for the certificate of title if requested by the owner or operator of the facility, and the receipt may serve as an instrument for reclaiming the certificate of title if the vehicle is rebuilt.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 5].

Approved March 27, 2007

## CHAPTER NO. 54

[HB 167]

AN ACT REVISING THE INTEGRATED WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT LAWS; REVISING THE PROCESS FOR ADOPTING THE STATE SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY PLAN; TRANSFERRING THE AUTHORITY TO ADOPT THE PLAN FROM THE BOARD OF ENVIRONMENTAL REVIEW TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AND AMENDING SECTIONS 75-10-104, 75-10-106, 75-10-111, 75-10-807, AND 75-10-920, MCA.

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

**Section 1.** Section 75-10-104, MCA, is amended to read:

**“75-10-104. Duties of department.** The department shall:

(1) prepare, *adopt, and implement* a state solid waste management and resource recovery plan as required by 75-10-807 *and 75-10-111* ~~for submission to the board;~~

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

(d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

(e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c); *and*

(f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6); ~~and~~

~~(g) providing guidelines for integrated waste management;~~

(3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;

(4) enforce and administer the provisions of this part;

(5) approve plans for a proposed solid waste management system submitted by a local government; and

(6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.”

**Section 2.** Section 75-10-106, MCA, is amended to read:

**“75-10-106. Duties of board.** The board shall:

(1) ~~adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and~~

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a)(1) submission of plans for a solid waste management system; and

(b)(2) the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115.”

**Section 3.** Section 75-10-111, MCA, is amended to read:

**“75-10-111. State solid waste management and resource recovery plan — hearings and action.** ~~(1) A proposed~~ *The department shall adopt the solid waste management and resource recovery plan shall be prepared by the department required in 75-10-104 and 75-10-807 according to the rulemaking procedures of the Montana Administrative Procedure Act under Title 2, chapter 4, part 3. The department shall prepare the plan in conjunction with local governments in the state and any other interested person, citizens, solid waste and recycling industries, environmental organizations, and others involved or interested in the management of solid waste. After a draft of a proposed solid waste management plan has been prepared, Within 3 days after the notice of proposed rulemaking to adopt the plan is published pursuant to Title 2, chapter 4, part 3, the department shall circulate mail a copy of the notice and the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of Title 75, chapter 10, parts 1 and 2, chapter 10 of this title, the governor, the environmental quality council, and any other interested person. for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft proposed rulemaking concerning the plan, the department shall hold at least three public hearings around the state on the draft plan one public hearing.*

(2) ~~A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least~~



one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.”

**Section 4.** Section 75-10-807, MCA, is amended to read:

**“75-10-807. Requirement to prepare and implement state solid waste management and resource recovery plan.** (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare, *adopt*, and implement a state solid waste management *and resource recovery* plan in accordance with 75-10-111 and this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804;

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

~~(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.~~

~~(4) The department shall conduct hearings as provided in 75-10-111.~~

~~(5)~~(3) The plan must be evaluated every 5 years and updated as necessary.”

**Section 5.** Section 75-10-920, MCA, is amended to read:

**“75-10-920. Environmental, social, and economic factors evaluated during certification.** In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the ~~Montana~~ *state* solid waste management *and resource recovery* plan;

(4) solid waste disposal needs, including:

(a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;

(b) promotional activities of the applicant that may have given rise to the need for the facility;

(c) social changes resulting from the facility, including protection of public health and environmental quality; and

(d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

(a) the area of land required and its ultimate use;

(b) consistency with state and regional solid waste plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

(f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;

(g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;

(h) scenic impacts;

(i) the effects on natural systems, wildlife, and plant life;

(j) the impacts on important historic, architectural, archaeological, and cultural areas and features;

(k) the impacts on public facilities and accommodations;

(l) opportunities for joint use with solid waste disposal-intensive industries; and

(m) the economic impact on the local area, local government infrastructure, and existing industry;

(6) water resources impacts, including:

(a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;

(c) an inventory of effluents, including physical, chemical, and biological characteristics;

(d) hydrologic studies of effects of effluents on receiving waters;

- (e) the effect of the facility on water quality;
- (f) the facility's projected water uses;
- (g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;
- (h) effects on unique or otherwise significant ecosystems, such as wetlands; and
- (i) ground water, vadose zone, and methane gas monitoring systems and programs;
- (7) characteristics of solid wastes that will be disposed of at the facility, including:
  - (a) the rate of solid waste disposal;
  - (b) the solid waste handling practices proposed to be used;
  - (c) the present and expected future physical and chemical characteristics of the solid waste; and
  - (d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;
- (8) transportation practices, including:
  - (a) route and mode of transporting waste;
  - (b) environmental, social, and economic impacts of transportation facilities; and
  - (c) transfer facilities.”

Approved March 27, 2007

## CHAPTER NO. 55

[HB 264]

AN ACT ALLOWING A LICENSED ANGLER FISHING FROM A BOAT OR THE SHORE IN A LAKE OR RESERVOIR TO FISH BY HOOK AND TWO LINES OR TWO RODS; AMENDING SECTION 87-2-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-120, MCA, is amended to read:

**“87-2-120. Lawful means of angling or fishing.** (1) *The Except as provided in subsection (2), the only lawful means of angling or fishing is by hook and single line or single rod, in hand or within immediate control. All other methods of angling or fishing, unless authorized by commission rule or authorized in subsection (2), are unlawful.*

(2) *A licensed angler fishing from a boat or the shore in a lake or reservoir may fish by hook and two lines or two rods, in hand or within immediate control, in accordance with rules that the commission shall adopt.”*

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

Approved March 27, 2007

## CHAPTER NO. 56

[HB 334]

AN ACT REMOVING THE TIME RESTRICTIONS ON THE DESIGN-BUILD HIGHWAY CONTRACT PROCESS FOR HIGHWAY CONSTRUCTION PROJECTS; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-134, AND 60-2-137, MCA; REPEALING SECTIONS 60-2-135 AND 60-2-136, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 18-8-204, MCA, is amended to read:

**“18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in ~~60-2-135 through 60-2-137.~~”

**Section 2.** Section 18-8-205, MCA, is amended to read:

**“18-8-205. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other

firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting ~~pilot~~ program authorized in ~~60-2-135 through 60-2-137.~~"

**Section 3.** Section 60-2-111, MCA, is amended to read:

**"60-2-111. Letting of contracts on state and federal-aid highways.** (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting ~~pilot~~ program authorized in ~~60-2-135 through 60-2-137.~~"

**Section 4.** Section 60-2-112, MCA, is amended to read:

**"60-2-112. Competitive bidding — reciprocity.** (1) Except as provided in subsections (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing \$50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting ~~pilot~~ program if the provisions of ~~60-2-135 through 60-2-137~~ have been met.

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) For the purposes of subsection (6), “construction” has the meaning provided in 18-2-101.”

**Section 5.** Section 60-2-134, MCA, is amended to read:

**“60-2-134. Definitions.** For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, ~~60-2-135 through~~ 60-2-137, and this section, the following definitions apply:

(1) “Design-build contracting” means the process of entering into a single contract between the commission and a design-build contractor in which the design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

(2) “Design-build contractor” means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

(3) “Design-build criteria package” means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build project.

(4) “Request for proposals” means a part of the design-build criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department’s estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(5) “Request for qualifications” means a part of the design-build criteria package that contains the desired minimum qualifications of the design-build contractor, a scope of work statement, the project requirements, the amount of

reimbursement that the commission has determined will be paid to prospective design-build contractors who qualify for the short list but are not awarded a contract, and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider.”

**Section 6.** Section 60-2-137, MCA, is amended to read:

**“60-2-137. Design-build contracting process — submission of proposals — department’s duties.** (1) ~~In accordance with recommendations of the design-build contracting board, once~~ *Once* the department has identified a project for which the design-build contracting process will be used, the department shall prepare and advertise a request for qualifications.

(2) From the responders to the request for qualifications, the department shall prepare a short list of the responders that it believes are most qualified, not to exceed five responders on any single project.

(3) (a) The department shall announce the short list and issue a request for proposals to each of the prospective design-build contractors on the short list, who may then submit a technical *and price* proposal to the department.

(b) A technical *and price* proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective design-build contractor’s approach to designing, constructing, and managing the project in accordance with the design-build criteria package. The technical *and price* proposal must also include the prospective design-build contractor’s conceptual design and construction sequence and schedule *and the lump-sum price to complete the project.*

(4) The department shall evaluate the technical *and price* proposals and make a written recommendation to the commission regarding the department’s selection of the design-build contractor to be awarded the contract.

(5) The prospective design-build contractors who appeared on the department’s short list but are not awarded the contract may be paid a stipend, in an amount determined by the commission, for costs incurred in submitting the response to the department’s request for proposals.”

**Section 7. Repealer.** Sections 60-2-135 and 60-2-136, MCA, are repealed.

**Section 8. Effective date.** [This act] is effective July 1, 2007.

Approved March 27, 2007

## CHAPTER NO. 57

[SB 19]

AN ACT REVISING LAWS GOVERNING OIL AND GAS OPERATIONS; REQUIRING A SEISMIC ACTIVITY PERMITHOLDER TO FURNISH INFORMATION TO A SURFACE OWNER; REQUIRING AN OIL OR GAS DEVELOPER OR OPERATOR TO PROVIDE INFORMATION TO A SURFACE OWNER; REQUIRING THE SURFACE OWNER TO PROVIDE INFORMATION; INCREASING THE TIME PERIODS FOR NOTICE OF DRILLING OPERATIONS; CLARIFYING THAT A SURFACE OWNER AND OIL AND GAS DEVELOPER OR OPERATOR MAY USE DISPUTE RESOLUTION PROCESSES; CLARIFYING THE PENALTY FOR VIOLATING NOTICE REQUIREMENTS; AMENDING SECTIONS 82-1-107,

82-10-503, 82-10-504, AND 82-10-505, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 82-1-107, MCA, is amended to read:

**“82-1-107. Permitholder to furnish information to surface user owner.** (1) Before commencing seismic activity, the person, firm, or corporation shall notify the surface ~~user~~ owner, as defined in 82-10-502, as to the approximate time schedule of the planned activity, ~~and upon~~ and shall provide copies of Title 82, chapter 10, part 5, this part, and, if available, a current publication produced by the environmental quality council entitled “A Guide to Split Estates in Oil and Gas Development”. Upon request, the following information shall must also be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm’s designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) *the* name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ *the* self-insurance;

(d) the number of the bond required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place;

(f) *the* anticipated need, if any, to obtain water from the surface ~~user~~ owner during planned seismic activity.

(2) The surface ~~user~~ owner is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained.

(3) *The surface owner is responsible for providing the name and address of the permitholder to any lessees, tenants, or other parties responsible for surface operations on the property.”*

**Section 2.** Section 82-10-503, MCA, is amended to read:

**“82-10-503. Notice of drilling operations.** (1) In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that ~~he the oil and gas developer or operator~~ plans to undertake. ~~This~~ *The* notice shall must be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. *The notice must include a copy of this part and, if available, a current publication produced by the environmental quality council entitled “A Guide to Split Estates in Oil and Gas Development”.* ~~This~~ *The* notice shall must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner’s use of the property. The notice shall must be given no more than ~~90~~ 180 days and no fewer than ~~10~~ 20 days before commencement of any activity on any activity that disturbs the land surface. *The surface owner may waive the notice requirement.*

(2) *The surface owner is responsible for providing the name and address of the oil and gas developer or operator to any lessees, tenants, or other parties responsible for surface operations on the property.*



(3) *Prior to the oil and gas developer or operator providing the notice required in subsection (1), a person qualified under 70-16-111 may enter the land to investigate and use boundary evidence and perform boundary, well site location, and access road surveys if the notice requirements of 70-16-111 are met. However, the oil and gas developer or operator shall provide the notice required pursuant to subsection (1) prior to any activity that disturbs the land surface.*

**Section 3.** Section 82-10-504, MCA, is amended to read:

**“82-10-504. Surface damage and disruption payments — dispute resolution — penalty for late payment.** (1) (a) *The surface owner and the oil and gas developer or operator shall attempt to negotiate an agreement on damages. The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling oil and gas operations.*

(b) *The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration shall must be given to the period of time during which the loss occurs.*

(c) *At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation.*

(e)(d) *The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner shall must be compensated by a single sum payment for harm caused by exploration only.*

(d)(e) *The payments contemplated by this subsection (1) may only cover only land directly affected by drilling oil and gas operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption; . A person may not reserve or assign that damage and disruption compensation apart from the surface estate except to a tenant of the surface estate.*

(2) *An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.”*

**Section 4.** Section 82-10-505, MCA, is amended to read:

**“82-10-505. Liability for damages to property.** *The oil and gas developer or operator is responsible for all damages to real or personal property; real or personal; resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to property; real or personal; property caused by drilling oil and gas operations and production.”*

**Section 5. Penalty for notice violation.** *Failure to comply with the notice requirements of 82-10-503 subjects the oil and gas developer or operator to the provisions of 82-11-122 and 82-11-147 through 82-11-149.*

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to [section 5].

**Section 7. Applicability.** [This act] applies to proceedings begun on or after October 1, 2007.

Approved March 27, 2007

## CHAPTER NO. 58

[SB 29]

AN ACT ESTABLISHING THE ROBERT E. EWING JR. MEMORIAL HIGHWAY ON INTERSTATE 90 BETWEEN COLUMBUS AND PARK CITY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS; REQUIRING THAT MAPS BE UPDATED WITH THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Robert E. Ewing Jr. was an exceptional individual who dedicated his entire life's work to building the highway system in Montana; and

WHEREAS, Robert E. Ewing Jr. worked nearly 50 years to construct and improve roads in Montana; and

WHEREAS, Robert E. Ewing Jr. had a lifetime commitment to do the best job possible for the Montana Department of Transportation and the people of Montana; and

WHEREAS, Robert E. Ewing Jr. was the resident engineer during construction of Interstate 90 from Columbus to Park City, which in 1971 won the first place construction award from the Montana Highway Commission for new interstate highway construction; and

WHEREAS, Robert E. Ewing Jr. was a man of the highest personal integrity who was a dedicated public servant with an outstanding record of accomplishment and service.

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

**Section 1. Robert E. Ewing Jr. memorial highway.** (1) There is established the Robert E. Ewing Jr. memorial highway composed of the existing Montana interstate 90 from reference marker 410 to reference marker 424, between Columbus and Park City.

(2) When existing road signs between reference marker 410 and reference marker 424 need replacement, the department shall erect road signs reflecting the memorial designation in subsection (1).

(3) Maps that identify roadways in Montana must reflect the memorial designation in subsection (1) when maps are updated or replaced.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved March 27, 2007

## CHAPTER NO. 59

[SB 30]

AN ACT ALLOWING A QUALIFIED VETERAN TO BE ISSUED SPECIAL COMBINATION DISABLED VETERAN AND PURPLE HEART LICENSE PLATES; AND AMENDING SECTIONS 49-4-302, 49-4-304, AND 61-3-458, MCA.

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

**Section 1.** Section 49-4-302, MCA, is amended to read:

**“49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters “DV” issued under 61-3-458(3)(b) *or* (3)(i) or displaying a wheelchair as provided in 61-3-332(9); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters “DV” issued under 61-3-458(3)(b) *or* (3)(i) or displaying a wheelchair as provided in 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space.”

**Section 2.** Section 49-4-304, MCA, is amended to read:

**“49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle.** (1) Except as authorized in 49-4-303, unless the department of justice issued a special license plate under 61-3-332(9) or 61-3-458(3)(b) or (3)(i) indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-301, a person with a disability who does not hold a driver’s license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability.”

**Section 3.** Section 61-3-458, MCA, is amended to read:

**“61-3-458. Special plates for military personnel, veterans, and spouses.** (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military or veteran license plates may not be issued for a motorcycle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant’s unit commander verifying the individual’s eligibility and authorizing the department to issue the plates to

the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special

license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(i) *A veteran who qualifies under subsections (3)(b) and (3)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (3)(b).*

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b) or the combination plates provided for in subsection (3)(i).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Approved March 27, 2007

## CHAPTER NO. 60

[SB 32]

AN ACT ALLOWING THE LOCAL OMBUDSMAN ACCESS TO A LONG-TERM CARE FACILITY AFTER NORMAL VISITING HOURS WITH THE APPROVAL OF THE LONG-TERM CARE OMBUDSMAN TO PERFORM THE OMBUDSMAN'S DUTIES; AND AMENDING SECTION 52-3-604, MCA.

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

**Section 1.** Section 52-3-604, MCA, is amended to read:

**"52-3-604. Access to long-term care facilities.** (1) *The Subject to subsection (2), the long-term care ombudsman or local ombudsman shall must have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.*

(2) *Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman during normal visiting hours and to the long-term care ombudsman at any time he considers. A local ombudsman may have access after normal visiting hours with approval, directions, and oversight of the long-term care ombudsman when necessary to perform the duties described in 52-3-603.*

(3) The ombudsman shall carry out the duties described in 52-3-603 in a manner that is least disruptive to resident care and activities.”

Approved March 27, 2007

## CHAPTER NO. 61

[SB 40]

AN ACT GENDER NEUTRALIZING AND CONFORMING TITLES 1 THROUGH 7 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 1-1-107, 1-1-201, 1-1-202, 1-1-203, 1-1-204, 1-1-217, 1-1-219, 1-1-224, 1-1-226, 1-1-512, 1-1-515, 1-1-516, 1-3-203, 1-3-204, 1-3-205, 1-3-206, 1-3-208, 1-3-209, 1-3-210, 1-3-212, 1-3-217, 1-3-220, 1-3-234, 1-4-102, 1-5-302, 1-5-303, 1-5-305, 1-5-406, 1-5-407, 1-5-419, 1-5-420, 1-6-102, 1-6-104, 2-1-302, 2-2-205, 2-2-207, 2-2-304, 2-3-105, 2-3-221, 2-4-104, 2-4-202, 2-4-506, 2-4-604, 2-4-613, 2-4-621, 2-6-106, 2-6-108, 2-6-111, 2-6-303, 2-6-304, 2-7-103, 2-7-511, 2-8-105, 2-9-101, 2-9-103, 2-9-112, 2-9-305, 2-9-314, 2-9-504, 2-9-507, 2-9-511, 2-9-512, 2-9-513, 2-9-514, 2-9-515, 2-9-516, 2-9-523, 2-9-524, 2-9-527, 2-9-528, 2-15-111, 2-15-122, 2-15-124, 2-15-131, 2-15-132, 2-15-201, 2-15-221, 2-15-302, 2-15-502, 2-15-602, 2-15-1202, 2-15-1203, 2-15-1515, 2-15-1521, 2-15-1701, 2-15-1742, 2-15-1744, 2-15-1748, 2-15-1814, 2-15-3002, 2-15-3003, 2-15-3104, 2-15-3305, 2-15-3331, 2-15-3402, 2-16-102, 2-16-114, 2-16-115, 2-16-202, 2-16-212, 2-16-213, 2-16-303, 2-16-406, 2-16-504, 2-16-505, 2-16-507, 2-16-513, 2-16-521, 2-16-603, 2-16-612, 2-16-613, 2-16-616, 2-16-617, 2-16-620, 2-16-621, 2-16-622, 2-16-633, 2-16-635, 2-17-816, 2-18-106, 2-18-107, 2-18-512, 2-18-612, 2-18-616, 2-18-619, 2-18-621, 2-18-902, 2-18-1001, 2-18-1011, 3-1-402, 3-1-404, 3-1-405, 3-1-504, 3-1-514, 3-1-515, 3-1-516, 3-1-517, 3-1-522, 3-1-601, 3-1-602, 3-1-603, 3-1-604, 3-1-605, 3-1-606, 3-1-607, 3-1-701, 3-1-1003, 3-1-1009, 3-1-1010, 3-1-1103, 3-1-1104, 3-1-1106, 3-1-1108, 3-1-1109, 3-1-1110, 3-1-1111, 3-1-1122, 3-1-1502, 3-1-1503, 3-2-102, 3-2-212, 3-2-301, 3-2-401, 3-2-406, 3-2-502, 3-5-115, 3-5-201, 3-5-202, 3-5-213, 3-5-214, 3-5-215, 3-5-216, 3-5-311, 3-5-401, 3-5-405, 3-5-503, 3-5-504, 3-5-505, 3-5-508, 3-5-509, 3-5-611, 3-6-101, 3-6-203, 3-6-303, 3-7-201, 3-7-203, 3-7-224, 3-10-201, 3-10-202, 3-10-204, 3-10-209, 3-10-233, 3-10-234, 3-10-401, 3-10-405, 3-10-502, 3-10-514, 3-10-602, 3-10-706, 3-10-1005, 3-11-202, 3-11-203, 3-11-204, 3-11-205, 3-12-203, 3-15-201, 3-15-203, 3-15-401, 3-15-504, 3-15-601, 3-15-602, 3-15-604, 3-15-701, 3-15-801, 5-1-105, 5-2-102, 5-2-104, 5-2-105, 5-2-211, 5-2-213, 5-2-216, 5-2-302, 5-2-405, 5-4-204, 5-4-302, 5-4-303, 5-4-304, 5-4-305, 5-4-306, 5-5-101, 5-5-102, 5-5-103, 5-5-105, 5-5-301, 5-5-302, 5-5-413, 5-5-415, 5-5-418, 5-5-419, 5-5-420, 5-5-421, 5-5-431, 5-6-109, 5-7-101, 5-7-201, 5-7-203, 5-7-210, 5-7-301, 5-11-104, 5-11-204, 5-12-202, 5-12-203, 5-13-303, 5-13-306, 5-13-307, 5-13-309, 5-13-402, 5-15-102, 5-15-103, 5-15-105, 5-15-201, 5-16-105, 7-1-4121, 7-2-101, 7-2-2206, 7-2-2207, 7-2-2223, 7-2-2227, 7-2-2228, 7-2-2242, 7-2-2255, 7-2-2405, 7-2-2411, 7-2-2412, 7-2-2423, 7-2-2502, 7-2-2503, 7-2-2504, 7-2-2603, 7-2-2702, 7-2-2703, 7-2-2705, 7-2-2706, 7-2-2712, 7-2-2750, 7-2-2756, 7-2-2757, 7-2-4107, 7-2-4807, 7-2-4913, 7-3-102, 7-3-151, 7-3-179, 7-3-183, 7-3-193, 7-3-203, 7-3-212, 7-3-220, 7-3-221, 7-3-301, 7-3-304, 7-3-305, 7-3-312, 7-3-315, 7-3-403, 7-3-414, 7-3-432, 7-3-433, 7-3-434, 7-3-435, 7-3-436, 7-3-437, 7-3-438, 7-3-439, 7-3-440, 7-3-441, 7-3-442, 7-3-501, 7-3-503, 7-3-514, 7-3-601, 7-3-603, 7-3-605, 7-3-606, 7-3-607, 7-3-612, 7-3-613, 7-3-705, 7-3-1215, 7-3-1219, 7-3-1220, 7-3-1221, 7-3-1228, 7-3-1241, 7-3-1242, 7-3-1244, 7-3-1245, 7-3-1246, 7-3-1249, 7-3-1253, 7-3-1254, 7-3-1255, 7-3-1257, 7-3-1259, 7-3-1304, 7-3-1305,

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

**Section 1.** Section 1-1-107, MCA, is amended to read:

**“1-1-107. Unwritten law defined.** Unwritten law is the law *that is* not promulgated and recorded, as mentioned in 1-1-104, but ~~which that~~ is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned ~~men~~ *people.*”

**Section 2.** Section 1-1-201, MCA, is amended to read:

**“1-1-201. Terms of wide applicability.** (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

- (a) “Oath” includes an affirmation or declaration.
- (b) “Person” includes a corporation *or other entity* as well as a natural person.
- (c) “Several” means two or more.
- (d) “State”, when applied to the different parts of the United States, includes the District of Columbia and the territories.
- (e) “United States” includes the District of Columbia and the territories.

(2) Wherever the word “man” or “men” or a word ~~which that~~ includes the syllable “man” or “men” in combination with other syllables, such as “workman”, appears in this code, ~~such the~~ word or syllable ~~shall be deemed to include~~ *includes* “woman” or “women” unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to ~~the male~~ *a specific sex* only.

(3) Whenever the term “heretofore” occurs in any statute, it ~~shall~~ *must* be construed to mean any time previous to the day ~~such the~~ statute ~~shall take~~ *takes* effect. Whenever the word “hereafter” occurs, it ~~shall~~ *must* be construed to mean the time after the statute containing the term ~~shall take~~ *takes* effect.”

**Section 3.** Section 1-1-202, MCA, is amended to read:

**“1-1-202. Terms relating to procedure and the judiciary.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A ~~“deposition”~~ *“Deposition”* means a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling ~~him~~ *the adverse party* to attend and cross-examine.

(2) “Judicial officers” means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) A ~~“judicial”~~ *“Judicial* record” means the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) An ~~“oral”~~ *“Oral* examination” means an examination in the presence of the jury or tribunal that is to decide the fact or act upon it or the *spoken* testimony of ~~the witness~~ being heard by the jury or tribunal ~~from the lips of the witness.~~

(5) “Process” means a writ or summons issued in the course of judicial proceedings.

(6) ~~For~~ *“Registered mail”*, for purposes of legal notification, ~~the term~~ *“registered mail”* means registered or certified mail.

(7) "Testify" means every mode of oral statement under oath or affirmation.

(8) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer."

**Section 4.** Section 1-1-203, MCA, is amended to read:

**"1-1-203. Terms relating to instruments and other writings.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) ~~The "execution"~~ *"Execution"* of an instrument ~~is the means~~ subscribing and delivering it, with or without affixing a seal.

(2) ~~The term "folio"~~ *"Folio"*, when used as a measure for computing fees, means 100 words, counting every two ~~figures~~ *letters or numbers* necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(3) "Printing" ~~is means~~ the act of reproducing a design on a surface by any process.

(4) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs ~~his that person's~~ *the person's* own name as a witness.

(5) ~~A "subscribing witness" is one~~ *"Subscribing witness" means a person* who sees a writing executed or hears it acknowledged and at the request of the party ~~thereupon~~ signs ~~his the person's~~ *the person's* name as a witness.

(6) "Writing" includes printing."

**Section 5.** Section 1-1-204, MCA, is amended to read:

**"1-1-204. Terms denoting state of mind.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Corruptly" ~~denotes means~~ *means* a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) "Knowingly" ~~denotes means~~ *means* only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) "Malice" and "maliciously" ~~denote mean~~ *mean* a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) "Neglect", "negligence", "negligent", and "negligently" ~~denote mean~~ *mean* a want of the attention to the nature or probable consequences of the act or omission that a prudent ~~man~~ *person* would ordinarily give in acting in ~~his the~~ *the* person's own concerns.

(5) "Willfully", when applied to the intent with which an act is done or omitted, ~~denotes means~~ *means* a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage."

**Section 6.** Section 1-1-217, MCA, is amended to read:

**"1-1-217. Notice — actual and constructive.** (1) Notice is:

(a) actual whenever it consists of express information of a fact;

(b) constructive whenever it is imputed by law.

(2) ~~Every~~ *Each* person who has actual notice of circumstances sufficient to put a prudent ~~man~~ *person* upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting ~~such~~ *the* inquiry, ~~he~~ *the person* might have learned ~~such~~ *the* facts.”

**Section 7.** Section 1-1-219, MCA, is amended to read:

**“1-1-219. Relationship by affinity.** (1) Unless the context requires otherwise, in this code “affinity” means the relation ~~which~~ *that* one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to ~~his~~ *that person’s* spouse’s blood relatives as ~~his~~ *that person’s* spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term “affinity” includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.”

**Section 8.** Section 1-1-224, MCA, is amended to read:

**“1-1-224. Observance of right to keep and bear arms.** The week beginning the first Monday in March is an official week of observance to commemorate Montana’s valued heritage of the right of each person to keep and bear arms in the defense of ~~his~~ *the person’s* home, person, or property or in aid of civil power. During this week, all Montanans are urged to reflect on their right to keep and bear arms and to celebrate this right in lawful ways.”

**Section 9.** Section 1-1-226, MCA, is amended to read:

**“1-1-226. Official observance of Montana’s hunting heritage.** The week beginning the third Monday in September is an official week of observance in Montana to commemorate this state’s valued heritage of hunting game animals. During this week, all Montanans are urged to:

- (1) reflect on hunting as an expression of our culture and heritage;
- (2) acknowledge that it is our community of ~~sportsmen, sportswomen, and~~ hunters who have made the greatest contributions to the establishment of current game animal populations; and
- (3) celebrate this culture and heritage in all lawful ways.”

**Section 10.** Section 1-1-512, MCA, is amended to read:

**“1-1-512. State Vietnam veterans’ memorial.** (1) The memorial located in Rose Park, Missoula, Montana, dedicated to the ~~men and women~~ *individuals* who served the United States in the Republic of Vietnam, is the official state Vietnam veterans’ memorial.

(2) The department of commerce ~~and the department of transportation in the production of highway maps of the state of Montana~~ *is* directed to reference the location of the official state Vietnam veterans’ memorial in Rose Park, Missoula, Montana, on ~~such~~ *official state* maps.”

**Section 11.** Section 1-1-515, MCA, is amended to read:

**“1-1-515. Montana medal of valor established.** (1) The governor is authorized to present, in the name of the people of Montana, a medal to be known as the Montana medal of valor, bearing a suitable inscription and ribbon,

to any citizen of the state who displays extraordinary courage in a situation threatening the lives of one or more people.

(2) The governor ~~shall~~ *may* award the Montana medal of valor to anyone whose behavior, in ~~his~~ *the governor's* judgment, merits ~~such~~ *the* recognition. The award must be made in a public ceremony at the recipient's city or town of residence or at a city or town designated by the recipient, except under the circumstances indicated in subsection (3).

(3) If the recipient of the medal of valor dies before the medal is awarded, the governor shall present the medal to the recipient's spouse, eldest surviving child, eldest surviving sibling, or either parent or to a person designated by one of these. If the medal is presented to a person who is not a resident of Montana, the award ceremony must be held at the state capitol in Helena."

**Section 12.** Section 1-1-516, MCA, is amended to read:

**"1-1-516. State Korean war veterans' memorial — Butte.** (1) The Korean war veterans' memorial located in Stodden Park, Butte, Montana, dedicated to the ~~men and women~~ *individuals* who served the United States in the Republic of Korea, is an official state Korean war veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of ~~a~~ *the* state Korean war veterans' memorial on official state maps."

**Section 13.** Section 1-3-203, MCA, is amended to read:

**"1-3-203. Change in purpose.** ~~One must~~ *A person may* not change ~~his~~ *the* person's purpose to the injury of another."

**Section 14.** Section 1-3-204, MCA, is amended to read:

**"1-3-204. Waiver of benefit of a law.** ~~Anyone~~ *Any person* may waive the advantage of a law intended solely for ~~his~~ *that person's* benefit. ~~But a~~ *A* law established for a public reason cannot be contravened by a private agreement."

**Section 15.** Section 1-3-205, MCA, is amended to read:

**"1-3-205. Limit on rights.** ~~One~~ *A person must shall* so use ~~his~~ *that person's* own rights as not to infringe upon the rights of another."

**Section 16.** Section 1-3-206, MCA, is amended to read:

**"1-3-206. Consent.** ~~He~~ *A person* who consents to an act is not wronged by it."

**Section 17.** Section 1-3-208, MCA, is amended to read:

**"1-3-208. Own wrong — no advantage.** ~~No one can~~ *A person may* not take advantage of ~~his~~ *the person's* own wrong."

**Section 18.** Section 1-3-209, MCA, is amended to read:

**"1-3-209. Fraudulent dispossession.** ~~He~~ *A person* who has fraudulently dispossessed ~~himself~~ *oneself* of a thing may be treated as if ~~he~~ *the person* still had possession."

**Section 19.** Section 1-3-210, MCA, is amended to read:

**"1-3-210. Acts on one's behalf.** ~~He~~ *A person* who can and does not forbid that which is done on ~~his~~ *that person's* behalf is ~~deemed~~ *considered* to have ~~bidden~~ *authorized* it."

**Section 20.** Section 1-3-212, MCA, is amended to read:

**“1-3-212. Benefit — burden.** ~~He~~ *A person* who takes the benefit ~~must~~ *shall* bear the burden.”

**Section 21.** Section 1-3-217, MCA, is amended to read:

**“1-3-217. Beyond ~~man’s~~ control.** ~~No man~~ *A person* is *not* responsible for that which ~~no man can~~ *a person cannot* control.”

**Section 22.** Section 1-3-220, MCA, is amended to read:

**“1-3-220. What ought to have been done.** That which ought to have been done is to be regarded as done, in favor of ~~him~~ *a person* to whom and against ~~him~~ *a person* from whom performance is due.”

**Section 23.** Section 1-3-234, MCA, is amended to read:

**“1-3-234. Third parties — who suffers.** ~~Where~~ *When* one of two innocent persons ~~must suffer~~ *suffers* by the act of a third, ~~he~~ *the person* by whose negligence it happened must be the sufferer.”

**Section 24.** Section 1-4-102, MCA, is amended to read:

**“1-4-102. Consideration of circumstances surrounding execution.** For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge ~~be~~ *is* placed in the position of those whose language ~~he~~ *the judge* is to interpret.”

**Section 25.** Section 1-5-302, MCA, is amended to read:

**“1-5-302. When execution may be proved by handwriting.** The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

- (1) when the parties and all the subscribing witnesses are dead;
- (2) when the parties and all the subscribing witnesses are nonresidents of the state;
- (3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
- (4) when the subscribing witness ~~conceals himself~~ *hides* or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or
- (5) in case of the continued failure or refusal of the witness to testify for the ~~space~~ *period* of 1 hour after ~~his~~ *the witness’s* appearance.”

**Section 26.** Section 1-5-303, MCA, is amended to read:

**“1-5-303. Facts ~~which~~ *that* must be shown when offering proof of handwriting.** The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

- (1) the existence of one or more of the conditions mentioned in 1-5-302;
- (2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with ~~his~~ *that person’s* signature;
- (3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with ~~his~~ *that person’s* signature;
- (4) that the signature or signatures in question are genuine; and

(5) the place of residence of the witness.”

**Section 27.** Section 1-5-305, MCA, is amended to read:

**“1-5-305. Contents of certificate of proof.** An officer taking proof of the execution of ~~any an~~ instrument ~~must shall~~, in ~~his the~~ certificate endorsed ~~thereon upon~~ or attached ~~thereto to the instrument~~, set forth all the matters required by law to be done or known by ~~him the officer~~ or proved before ~~him the officer~~ on the proceeding, together with the names of all the witnesses examined before ~~him the officer~~, their places of residence ~~respectively~~, and the substance of their testimony.”

**Section 28.** Section 1-5-406, MCA, is amended to read:

**“1-5-406. Liabilities on official bond.** For the official misconduct or neglect of a notary public, ~~he the notary public~~ and the sureties on ~~his the notary public's~~ official bond are liable to the parties injured ~~thereby by the misconduct or neglect~~ for all damages sustained.”

**Section 29.** Section 1-5-407, MCA, is amended to read:

**“1-5-407. Certifying the official character of a notary.** The secretary of state may certify to the official character of ~~such a~~ notary public. ~~Any A~~ notary public may file a copy of ~~his the notary public's~~ commission in the office of any county clerk of any county in the state, and ~~thereafter said the~~ county clerk may certify to the official character of ~~such the~~ notary public.”

**Section 30.** Section 1-5-419, MCA, is amended to read:

**“1-5-419. Transfer of records upon termination of office.** It is the duty of ~~every each~~ notary public ~~on his upon~~ resignation or removal from office or at the expiration of ~~his the notary public's~~ term and, in case of ~~his the~~ notary public's legal representative to ~~forthwith~~ deposit in a timely manner all the records kept by ~~him the notary public~~ in the office of the county clerk and recorder of the county in which ~~he the notary public~~ was a resident. On failure to do so, the ~~offending person so offending~~ is liable ~~to for~~ damages to any person injured ~~thereby by the failure~~.”

**Section 31.** Section 1-5-420, MCA, is amended to read:

**“1-5-420. Powers and duties of county clerk and recorder with whom records deposited.** It is the duty of each ~~county clerk and recorder aforesaid~~ to receive and safely keep all ~~such~~ records and papers of the notary in the case ~~above named described in 1-5-419~~ and to give attested copies of them under ~~his a~~ seal, ~~for which he may demand such~~ *The county clerk and recorder may charge the fees as by law may be allowed by law* to the notaries, and ~~such the~~ copies ~~shall~~ have the same effect as if certified by the notary.”

**Section 32.** Section 1-6-102, MCA, is amended to read:

**“1-6-102. Form of ordinary oath.** An oath or affirmation in an action or proceeding may be administered ~~as follows: by the person who swears or affirms~~ expressing ~~his that person's~~ assent when addressed ~~in the following form, with~~ “You do solemnly swear (or affirm, as the case may be) that the evidence you ~~shall~~ give in this issue (or matter), pending between .... and ....., ~~shall be is~~ the truth, the whole truth, and nothing but the truth, so help you God.”

**Section 33.** Section 1-6-104, MCA, is amended to read:

**“1-6-104. Affirmation or declaration in lieu of oath.** Any person who desires it may, ~~at his option~~, instead of taking an oath make ~~his a~~ solemn

affirmation or declaration by assenting when addressed in the following form: with "You do solemnly affirm (or declare), etc.", as *provided* in 1-6-102."

**Section 34.** Section 2-1-302, MCA, is amended to read:

**"2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners.** (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, ~~he~~ *the governor* shall issue within 60 days a proclamation to the effect that ~~such the~~ *specified* jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe ~~or tribes~~, if ~~said the~~ *the* document provides for ~~such~~ approval, and there has been first obtained the consent of the board of county commissioners of each county ~~which that~~ *that* encompasses any portion of the reservation of ~~such the~~ *the* tribe ~~or tribes~~."

**Section 35.** Section 2-2-205, MCA, is amended to read:

**"2-2-205. Affidavit to be required by auditing officers.** ~~Every~~ *Each* officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers ~~must shall~~, before allowing ~~such the~~ accounts, require each of ~~such the~~ officers to make and file with ~~him the~~ *the auditing officer* an affidavit that ~~he the~~ *the affiant* has not violated any of the provisions of this part."

**Section 36.** Section 2-2-207, MCA, is amended to read:

**"2-2-207. Settlements to be withheld on affidavit.** (1) ~~Every~~ *Each* officer charged with the disbursement of public ~~moneys~~ *money* who is informed by affidavit establishing probable cause that ~~any an~~ officer whose account is about to be settled, audited, or paid by ~~him~~ has violated any of the provisions of this part ~~must shall~~ suspend ~~such the~~ settlement or payment and cause ~~such the~~ officer to be prosecuted for ~~such the~~ violation by the county attorney of ~~the~~ county.

(2) ~~In case there be~~ *If there is* a judgment for the defendant upon ~~such~~ prosecution, the proper officer may proceed to settle, audit, or pay ~~such the~~ account as if ~~no such an~~ affidavit had *not* been filed."

**Section 37.** Section 2-2-304, MCA, is amended to read:

**"2-2-304. Penalty for violation of nepotism law.** ~~Any~~ *A* public officer or employee or ~~any a~~ member of any board, bureau, or commission of this state or any political subdivision ~~thereof~~ who ~~shall~~, by virtue of ~~his the~~ *the person's* office, ~~have has~~ the right to make or appoint any person to render services to this state or any subdivision ~~thereof of this state~~ and who ~~shall make or appoint~~ *makes or appoints a person* to ~~such the~~ services or ~~enter enters~~ into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to ~~him the~~ *the person making the appointment or them* or connected with ~~him the~~ *the person making the appointment or them* by consanguinity within the fourth degree or by affinity within the second degree ~~shall thereby be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine not less than \$50 or more than

\$1,000, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.”

**Section 38.** Section 2-3-105, MCA, is amended to read:

**“2-3-105. Supplemental notice by radio or television.** (1) ~~Any~~ An official of the state or any of its political subdivisions who is required by law to publish ~~any~~ a notice required by law may supplement ~~such~~ the publication by a radio or television broadcast of a summary of ~~such~~ the notice or by both of ~~such~~ broadcasts when in ~~his~~ the official’s judgment the public interest will be served.

(2) The summary of ~~such~~ the notice ~~shall only~~ must be read ~~with no~~ without a reference to any person by name ~~who is~~ then a candidate for political office.

(3) ~~Such~~ The announcements ~~shall~~ may be made only by duly employed personnel of the station from which ~~such~~ the broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless ~~no~~ a broadcast station ~~exists~~ does not exist in ~~such~~ that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.”

**Section 39.** Section 2-3-221, MCA, is amended to read:

**“2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know.** A plaintiff who prevails in an action brought in district court to enforce ~~his~~ the plaintiff’s rights under Article II, section 9, of the Montana constitution may be awarded ~~his~~ costs and reasonable ~~attorneys’~~ attorney fees.”

**Section 40.** Section 2-4-104, MCA, is amended to read:

**“2-4-104. Subpoenas and enforcement — compelling testimony.** (1) An agency conducting any proceeding subject to this chapter ~~shall have the~~ power to ~~may~~ require the furnishing of ~~such~~ information, the attendance of ~~such~~ witnesses, and the production of ~~such~~ books, records, papers, documents, and other objects ~~as~~ that may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage ~~shall~~ must be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage ~~shall~~ must be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which ~~he~~ the witness may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make ~~such~~ an application to the district court. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of ~~such~~ the order ~~shall~~ must be punishable by contempt of court in the same manner and by the same procedures as is provided for ~~like~~ similar conduct committed in the course of civil actions in district courts. If another method of



subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.”

**Section 41.** Section 2-4-202, MCA, is amended to read:

**“2-4-202. Model rules.** (1) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 2-4-201. The attorney general shall add to, amend, or revise the model rules from time to time as ~~he~~ *the attorney general* considers necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions ~~thereto shall to~~ *the model rules must* be appropriate for the use of as many agencies as is practicable and ~~shall must~~ be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter.”

**Section 42.** Section 2-4-506, MCA, is amended to read:

**“2-4-506. Declaratory judgments on validity or application of rules.**

(1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in ~~such an~~ *the* action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has ~~his~~ *a* principal place of business or in which the agency maintains its principal office. The agency ~~shall must~~ be made a party to the action.”

**Section 43.** Section 2-4-604, MCA, is amended to read:

**“2-4-604. Informal proceedings.** (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency’s action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings ~~thereon~~ *on the objections*;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at ~~his~~ *that party's* cost a transcription of the recording, or both. Objections ~~shall~~ become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not ~~such~~ *the* evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter."

**Section 44.** Section 2-4-613, MCA, is amended to read:

**"2-4-613. Ex parte consultations.** Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, ~~shall~~ *may* not communicate with any party or ~~his~~ *a party's* representative in connection with any issue of fact or law in ~~such~~ *the* case except upon notice and opportunity for all parties to participate."

**Section 45.** Section 2-4-621, MCA, is amended to read:

**"2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency.** (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons ~~therefor~~ *for the decision* and of each issue of fact or law necessary to the proposed decision; *and must be* prepared by the person who conducted the hearing unless ~~he~~ *that person* becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential

requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided ~~he~~ *that the hearings officer* has completed all ~~his~~ duties as *the* hearings officer."

**Section 46.** Section 2-6-106, MCA, is amended to read:

**"2-6-106. Possession of records.** ~~Every~~ *Each* public officer is entitled to the possession of all books and papers pertaining to ~~his~~ *that* office or in the custody of a former incumbent by virtue of ~~his~~ *that* office."

**Section 47.** Section 2-6-108, MCA, is amended to read:

**"2-6-108. Attachment and warrant to enforce.** The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding ~~him~~ *the sheriff or constable* to search for ~~such~~ *the* books and papers and to take and deliver them to the plaintiff."

**Section 48.** Section 2-6-111, MCA, is amended to read:

**"2-6-111. Custody and reproduction of records by secretary of state.**

(1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;

(e) all books, records, parchments, maps, and papers kept or deposited in ~~his~~ *the secretary of state's* office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; ~~in that case, reproduction will~~ *Reproduction is not be necessary for transferred records.* The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies ~~shall~~ *must* be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in ~~his~~ *the* office with suitable equipment for displaying a record by projection to not less than its original size and for preparing, ~~for persons entitled thereto,~~ copies of the record *for persons entitled to copies.*

(6) All duplicates of all records ~~shall~~ *must* be identified and indexed."

**Section 49.** Section 2-6-303, MCA, is amended to read:

**“2-6-303. Ownership of records — transfer.** (1) All official records shall remain the property of the state. They shall *must* be delivered by outgoing officials to their successors and shall *must* be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(2) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that ~~he~~ *the officer* has been specifically directed by statute to preserve or keep in ~~his~~ *that* office.”

**Section 50.** Section 2-6-304, MCA, is amended to read:

**“2-6-304. Outgoing officials — records management duties.** (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall *must* be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review ~~his~~ *his* official records and isolate any items of a purely personal nature. ~~Such~~ *The* personal papers are not subject to this part, but they may be deposited with the official papers at the official’s discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of ~~his~~ *his* official records. ~~No restrictions~~ *Restrictions* may *not* be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official’s office shall *must* be decided by a four-fifths vote of the members of the state records committee.”

**Section 51.** Section 2-7-103, MCA, is amended to read:

**“2-7-103. Review ~~by governor~~ of executive branch *by governor*.** The office of the governor shall continuously study and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency. The governor shall, by executive order or other means within the authority granted to ~~him~~ *the governor*, take action to improve the manageability of the executive branch.”

**Section 52.** Section 2-7-511, MCA, is amended to read:

**“2-7-511. Access to public accounts — suspension of officer in case of discrepancy.** (1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer’s accounts to ~~his~~ *his* cash, bank accounts, or any of the papers, vouchers, or records of ~~his~~ *that* office or if the independent auditor finds a shortage of cash,

the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of his office and the governing body of the local government entity shall appoint ~~some~~ a qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit shall *must* be referred to the county attorney."

**Section 53.** Section 2-8-105, MCA, is amended to read:

**"2-8-105. Determination of agencies and programs to be reviewed.**

(1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of his recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

(2) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination."

**Section 54.** Section 2-9-101, MCA, is amended to read:

**"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, ~~which~~ *that* any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for ~~such~~ *the* damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims ~~which~~ *that* arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages ~~thereby~~, are considered one claim.

(2) (a) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of

the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation.

(b) ~~but the~~ *The term employee shall does* not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means ~~and includes~~ the state and political subdivisions ~~as herein defined~~.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest; *and* any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or ~~any~~ other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use ~~thereof of the property~~, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality ~~thereof of the state.~~"

**Section 55.** Section 2-9-103, MCA, is amended to read:

**"2-9-103. Actions under invalid law or rule — same as if valid — when.** (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, ~~neither he that officer, agent, or employee, nor any other officer, agent, or employee of the represented governmental entity, he represents nor or the governmental entity he represents~~ is *not* civilly liable in any action in which ~~he, such other officer, the individuals or such governmental entity would not have been liable had if the law had been valid.~~

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, ~~neither he that officer, agent, or employee, nor any other officer, agent, or employee of the represented governmental entity, he represents nor or the governmental entity he represents~~ is *not* civilly liable in any action in which ~~no liability would not attach had if the rule or ordinance had been valid.~~

**Section 56.** Section 2-9-112, MCA, is amended to read:

**"2-9-112. Immunity from suit for judicial acts and omissions.** (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from ~~his~~ *the* lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana."

**Section 57.** Section 2-9-305, MCA, is amended to read:

**“2-9-305. Immunization, defense, and indemnification of employees.** (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee’s office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against ~~him~~ *an employee*, the employee shall give written notice to ~~his~~ *the employee’s* supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee ~~having no~~ *who does not have* a supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee ~~shall~~ *must* be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee’s conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, ~~or~~ omission, or other actionable conduct gave rise to the claim. In ~~any such~~ *an* action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee’s employment, unless the claim constitutes an exclusion provided in ~~(b) through (d) of subsection (6)~~ *subsections (6)(b) through (6)(d)*.

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If ~~no~~ a judicial determination has *not* been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes *that* it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in ~~such~~ *that* action holding that the employer ~~had no~~ *did not have an* obligation to defend the employee. The governmental entity employer ~~has no~~ *does not have an* obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection."

**Section 58.** Section 2-9-314, MCA, is amended to read:

**"2-9-314. Court approval of attorney's fee attorney fees.** (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision ~~thereof of the state~~, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the ~~attorney's fee attorney fees~~ in any tort claim against the state or a political subdivision ~~thereof of the state~~. In regulating the amount of the ~~fee fees~~, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) ~~Attorneys' Attorney fees~~ regulated under this section ~~shall~~ *must* be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing ~~attorney's attorney fees~~ under this section, ~~he the attorney~~ forfeits the right to any ~~fee which he fees that the attorney~~ may have collected or been entitled to collect."

**Section 59.** Section 2-9-504, MCA, is amended to read:

**"2-9-504. Conditions, form, and signatures.** (1) The condition of ~~every~~ *an* official bond must be that the principal shall well, truly, and faithfully perform all official duties ~~then~~ required of ~~him~~ *the principal* by law and also ~~such~~ *any* additional duties ~~as that~~ may be imposed on ~~him~~ *the principal* by any law of the state subsequently enacted and that ~~he the principal~~ will account for, ~~and~~ pay over, and deliver to the person or officer entitled to receive ~~the same~~ all ~~moneys money~~ or other property that ~~may come into his hands the principal receives~~ as ~~such~~ *an* officer.



(2) The principal and sureties upon ~~any an~~ official bond are ~~also in all cases~~ liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by ~~such the~~ principal.

(3) ~~All official~~ Official bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized ~~as such~~ under the laws of this state or licensed to do business ~~herein in this state~~.

(4) ~~All official~~ Official bonds must be ~~in form~~ joint and several and made payable to the state of Montana in ~~such penalty the amount~~ and with ~~such the~~ conditions as required by this part or the law creating or regulating the duties of the office."

**Section 60.** Section 2-9-507, MCA, is amended to read:

**"2-9-507. Sureties' qualifications.** (1) The individual sureties on all official bonds ~~must shall~~ justify, before an officer authorized to administer oaths, by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which ~~he the~~ individual becomes surety in ~~said the~~ bond over and above ~~his the individual's~~ just debts and liabilities, exclusive of property exempt from execution.

(2) ~~No~~ A surety company or corporation organized under or that has complied with the laws of this state and ~~that~~ has been duly licensed to do business ~~as such herein shall in this state may not~~ be required to justify as a surety. ~~No such~~ A company or corporation ~~shall may not~~ be accepted as a surety in ~~any a~~ case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) ~~No~~ A member of the board of county commissioners ~~can may not~~ be accepted as a surety upon the official bond of any county, township, or school district officer in ~~his the commissioner's~~ county, ~~nor must any and a~~ county officer ~~become may not be~~ a surety upon the official bond of any other county officer."

**Section 61.** Section 2-9-511, MCA, is amended to read:

**"2-9-511. Extent of sureties' liability — when less than full.** (1) ~~Every~~ An official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties ~~therein~~ for any and all breaches of the conditions ~~thereof of the bond~~ committed during the time ~~such the~~ officer continues to discharge any of the duties of or hold the office and whether ~~such the~~ breaches are committed or suffered by the principal officer, ~~his or the officer's~~ deputy, or clerk.

(2) ~~Every such~~ A surety bond is in force and obligatory upon the principal and sureties ~~therein~~ for the faithful discharge of all duties ~~which that~~ may be required of ~~such the~~ officer by any law enacted subsequently to the execution of ~~such the~~ bond, and ~~such that~~ condition must be expressed ~~therein in the bond~~.

(3) When the penal sum of ~~any a~~ bond required to be given amounts to more than \$1,000, the sureties may become severally liable for portions not less than \$500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If ~~any such a~~ bond ~~becomes is~~ forfeited, an action may be brought ~~thereon on the bond~~ against any or all of the obligors and judgment ~~may be~~ entered against them, either jointly or severally, as they may be liable. The judgment ~~must may not~~ be entered against a surety severally bound for a greater sum than that for which ~~he the surety~~ is specially liable by the terms of

the bond. Each surety is liable to contribute to ~~his~~ *the* cosureties in proportion to the amount for which ~~he~~ *the surety* is liable.”

**Section 62.** Section 2-9-512, MCA, is amended to read:

**“2-9-512. Defects not to affect liability.** (1) ~~Whenever~~ *If* an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing ~~thereof of the bond~~, it is not void so as to discharge ~~such the~~ officer and sureties, ~~but they~~ *The sureties* are equitably bound to the state or party interested, and the state or ~~such the~~ party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from ~~such the~~ officer and the persons who intended to become and were included as sureties in ~~such the~~ bond.

(2) ~~No~~ *An* official bond entered into by ~~any an~~ officer or ~~any a~~ bond, recognizance, or written undertaking taken by ~~any an~~ officer in the discharge of the duties of ~~his~~ office ~~shall be~~ *is not* void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety ~~shall~~ *must* be bound by ~~such the~~ bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the ~~same~~ *bond* and the sureties to the amount specified in the bond, ~~or~~ recognizance, or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in ~~his~~ *the* complaint and recover to the same extent as if ~~such the~~ bond, recognizance, or written undertaking were perfect in all respects.”

**Section 63.** Section 2-9-513, MCA, is amended to read:

**“2-9-513. Insufficiency of sureties — action to vacate office.** (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that ~~the one or more~~ sureties on ~~any a~~ bond given pursuant to the provisions of this part ~~or any one of them~~ have, since ~~such the~~ bond was approved, died, ~~removed from~~ *left* the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on ~~such the~~ bond, the court, judge, board, officer, or other person may issue a citation to ~~such the~~ officer requiring ~~him~~ *the officer* on a day ~~therein~~ *named in the citation*, not less than 5 or more than 10 days after ~~date~~ *the citation was issued*, to appear and show cause why ~~such the~~ office should not be vacated, ~~which~~. *The* citation must be served and ~~the return thereof of the citation must be~~ made as in other cases.

(2) If the officer fails to appear and show good cause why ~~such the~~ office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person ~~must~~ *shall* make an order vacating the office. ~~The same~~ *office* must be filled as ~~approved~~ *provided* by law.”

**Section 64.** Section 2-9-514, MCA, is amended to read:

**“2-9-514. Additional security.** (1) The additional bond given pursuant to 2-9-513(2) must be in ~~such the~~ penalty as directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) ~~Every such~~ *Each* additional bond so filed and approved is of like force and obligation upon the principal and sureties ~~therein~~, from the time of its

execution; and subjects the officer and ~~his~~ *the* sureties to the same liabilities, suits, and actions ~~as that~~ are prescribed respecting the original bonds of officers.

(3) ~~In no case is the~~ *The original bond is not* discharged or affected when an additional bond has been given, but the ~~same original bond~~ *original bond* remains of ~~like the same~~ force and obligation as if ~~such the~~ *the* additional bond had not been given.”

**Section 65.** Section 2-9-515, MCA, is amended to read:

**“2-9-515. Additional security — liability of officers and sureties.** The officer and ~~his~~ *the officer’s* sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. ~~Such~~ *The injured* party may bring ~~his an~~ action upon either bond; or he may bring separate actions on the bonds respectively. ~~He~~ *The injured party* may allege the same cause of action and *may* recover judgment ~~therefor~~ in each suit.”

**Section 66.** Section 2-9-516, MCA, is amended to read:

**“2-9-516. Separate judgments.** If separate judgments are recovered on the *surety* bonds by ~~such an injured~~ party for the same cause of action, ~~he the injured party~~ is entitled to have execution issued on ~~such the~~ judgments respectively but ~~he must~~ *the injured party may only* collect, by execution or otherwise, *only* the amount actually adjudged ~~to him~~ on the same causes of action in one of the suits, together with the costs of both suits.”

**Section 67.** Section 2-9-523, MCA, is amended to read:

**“2-9-523. Proceedings to obtain release.** (1) ~~Any~~ *A* surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by ~~himself the surety~~ or someone ~~in his~~ *on the surety’s* behalf setting forth the name and office of the *bonded person for whom he is surety*, the amount for which ~~he the surety~~ is liable ~~as such~~, and ~~his the surety’s~~ desire to be released from further liability on account ~~thereof~~ *of the bond*.

(2) A notice containing the object of ~~such the~~ statement ~~shall~~ *must* be served personally on the principal unless ~~he shall have~~ *the principal has* left the state or ~~his the principal’s~~ whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the ~~same~~ *notice* may be served by publication once a week for four successive publications in ~~some a~~ newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk *and recorder* or county commissioners are principals, ~~shall~~ *must* be filed with the county clerk *and recorder*. When the county clerk *and recorder* or county commissioners are principals, the statement ~~shall~~ *must* be filed with the district court judge.

(3) ~~Any~~ *A* surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) ~~Any~~ *A* surety desiring to be released from an executor’s, administrator’s, or guardian’s bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority ~~where~~ *with whom* the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as *provided* in this section ~~provided~~ if ~~he the principal~~ can be found for service in the state; ~~if not, he~~ *If the principal cannot be found in the state, the principal* may be served by publication in a newspaper ~~at the county seat~~ as

hereinbefore provided *in subsection (2)*; or, if ~~no~~ a newspaper ~~be~~ *is not* published ~~thereat in that county~~, then in a newspaper published in an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of ~~said the~~ notice ~~shall be deemed is considered~~ legal notice ~~thereof~~.”

**Section 68.** Section 2-9-524, MCA, is amended to read:

**“2-9-524. Amount of new bond — failure to file.** (1) Whenever a statement is filed or filed and served as herein provided *in this part*, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking ~~shall must~~ be filed unless already provided by statute. If ~~no~~ ~~such an order be is not~~ made, ~~then such the~~ new or additional bond or undertaking ~~shall must~~ be executed for the same amount as the original.

(2) If ~~any an~~ officer or person ~~shall fail fails~~ to file a new or additional bond or undertaking within 20 days from the date of personal service or within 40 days from the date of the first publication or of posting of notice, as provided herein *in this part*, a new or additional bond or undertaking, the office or appointment of the person or officer ~~so failing shall become becomes~~ vacant and ~~such the~~ officer or person ~~shall forfeit his forfeits~~ the office or appointment. The ~~same shall office or position must~~ be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on ~~such the~~ bond or undertaking ~~shall may~~ not be ~~helden or held~~ liable ~~thereon on the~~ bond after the date herein provided for the vacating and forfeiting of ~~such the~~ office or appointment.”

**Section 69.** Section 2-9-527, MCA, is amended to read:

**“2-9-527. Suit on bonds.** (1) ~~Every~~ An official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties ~~therein~~ to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of ~~such the~~ officer in ~~his the~~ officer’s official capacity. ~~Any~~ A person ~~so~~ injured or aggrieved may bring suit on ~~such the~~ bond, in ~~his the~~ person’s own name, ~~without an assignment~~ thereof.

(2) ~~No such~~ A bond is ~~not~~ void on the first recovery of a judgment ~~thereon on the~~ bond. Suit may be ~~afterwards~~ brought, from time to time, and judgment recovered ~~thereon on the~~ bond by the state or by any person to whom a right of action has accrued against ~~such the~~ officer and ~~his the~~ sureties until the whole penalty of the bond is exhausted.”

**Section 70.** Section 2-9-528, MCA, is amended to read:

**“2-9-528. Lien on real estate of surety — action to compel specific performance.** (1) When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that ~~such the~~ bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in ~~lands land~~ (designating the county or counties in which the ~~same~~

*land* is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving ~~such the~~ affidavit ~~must shall~~ certify to the county clerk *and recorder of the county* in which ~~such the~~ real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, *along* with the date of the commencement of the suit.

(2) Upon receiving ~~such the~~ certificate, the county clerk *and recorder* ~~must shall~~ endorse upon ~~it the~~ certificate the time of its ~~reception receipt~~. ~~Such The~~ certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in ~~such the~~ action is a lien upon all real estate belonging to the defendant situated in any county in which ~~such the~~ certificate is ~~so~~ filed or to one or more of ~~such the~~ defendants, for the amount the owner ~~thereof of the real estate~~ is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate ~~mentioned referred to~~ in subsection (2), which agreement was made prior to the filing of ~~such the~~ certificate, but the purchase price ~~thereof of the real estate~~ is not due until after the filing of ~~said the~~ certificate, the judge of the district court in which ~~said the~~ action for specific performance is tried ~~must shall~~, if the purchaser is otherwise entitled to specific performance of ~~such the~~ agreement, order the ~~said~~ purchaser to pay the purchase price, or ~~so as much thereof as of the purchase price that~~ may be due, to the state treasurer, taking ~~his the state treasurer's~~ receipt ~~therefor for the payment~~. Upon ~~such~~ payment, the purchaser is entitled to enforce the specific performance of the agreement and take ~~said the~~ real estate free from the liens created by the filing of ~~said the~~ certificate. The ~~moneys so~~ money paid to the state treasurer must be held ~~by him~~, pending the litigation mentioned in ~~said the~~ certificate and subject to the lien created by the filing of ~~said the~~ certificate. If judgment is recovered against the defendant, the state treasurer in ~~his the treasurer's~~ settlement ~~must shall~~ pay to the county treasurer ~~entitled to the same~~ the amount due the county.”

**Section 71.** Section 2-15-111, MCA, is amended to read:

**“2-15-111. Appointment and qualifications of department heads.** (1) ~~The At the beginning of each gubernatorial term, the~~ governor shall appoint ~~at the beginning of each gubernatorial term~~ each department head who ~~is serves as~~ a director *as provided* in this chapter.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of ~~his the person's~~ professional and administrative knowledge and experience and ~~such~~ additional qualifications ~~as that~~ are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors ~~shall~~ *must* be elected or appointed and serve, and *have* their vacancies filled, as provided by law.”

**Section 72.** Section 2-15-122, MCA, is amended to read:

**“2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state’s institutions and the presidents of the units of the state’s university system, may also create advisory councils but only if federal law or regulation requires that ~~such~~ *the* official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. ~~They must~~ *The creating authority shall* file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) ~~of this section~~.

(2) Each advisory council created under this section ~~shall~~ *must* be known as the “... advisory council”.

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the ~~governor~~ *creating authority*; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102.

(5) Unless ~~he~~ *a member* is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed \$25 for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of council duties, and ~~he~~ *the member* is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year ~~each~~ *an* advisory council shall elect a ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* it considers necessary.

(7) Unless otherwise specified by the creating authority, ~~each~~ *an* advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the ~~chairman~~ *presiding officer* or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) ~~of this section~~, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor ~~must~~ *shall* file in ~~his~~ *the governor's* office and in the office of the secretary of state a record of the council created showing the council's:

- (a) name, in accordance with subsection (2) ~~of this section~~;
- (b) composition;
- (c) ~~names and addresses of the~~ appointed members, *including names and addresses*;
- (d) purpose; *and*
- (e) term of existence, in accordance with subsection (10) ~~of this section~~.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) ~~of this section~~. If the existence of an advisory council is extended, ~~they~~ *the creating authority* shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.”

**Section 73.** Section 2-15-124, MCA, is amended to read:

**“2-15-124. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member ~~shall~~ *must* be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members ~~shall~~ *must* be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members ~~shall~~ *must* be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of ~~his~~ *the governor's* term and the remaining members in the middle of ~~his~~ *the governor's* term. As used in this subsection, “majority” means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall *must* be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which ~~he~~ *the member* is appointed.

(5) The governor shall designate the ~~chairman~~ *presiding officer*. The ~~chairman~~ *presiding officer* may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid \$50 for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of board duties; and ~~he~~ is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their ~~annual~~ leave, but ~~such~~ *those* members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but ~~shall~~ *must* receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.”

**Section 74.** Section 2-15-131, MCA, is amended to read:

**“2-15-131. Rights of state personnel.** Unless otherwise provided in this chapter, each state officer or employee affected by ~~the~~ *a* reorganization of the executive branch of state government under this chapter is entitled to all rights ~~which he~~ *that the officer or employee* possessed as a state officer or employee before the effective date of the applicable ~~part of this chapter~~ *reorganization law*, including rights to tenure in office and of rank or grade, rights to vacation pay, and sick pay, and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of ~~this chapter or an amendment to this chapter~~ *the reorganization law*.”

**Section 75.** Section 2-15-132, MCA, is amended to read:

**“2-15-132. Rights to property.** The department or unit ~~thereof of a~~ *department* that succeeds to all or part of the functions of an agency under a reorganization within the executive branch also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and ~~without~~ *outside* of the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert ~~moneys~~ *money* in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and ~~his~~ *the governor's* decision is final. This section does not apply to property owned by the federal government.”

**Section 76.** Section 2-15-201, MCA, is amended to read:

**“2-15-201. Powers and duties of governor.** (1) In addition to the duties prescribed by the constitution, the governor shall ~~perform the following~~ *perform the following* duties:



~~(1)(a) He shall~~ supervise the official conduct of all executive and ministerial officers.;

~~(2)(b) He shall see~~ *ensure* that all offices are filled and ~~that~~ the duties thereof of the offices are performed or, in default thereof of the performance, apply such a remedy as ~~that~~ the law allows. If the remedy is imperfect, ~~he~~ *the governor* shall acquaint the legislature ~~therewith~~ *with the issue* at its next session.

~~(3)(2) (a) He~~ *The governor* shall make the appointments and ~~supply~~ *fill* the vacancies as required by law. When a vacancy in a position on a council, board, commission, or committee has occurred or is expected to occur and must be filled by gubernatorial appointment, the governor shall have posted in a conspicuous place in the state capitol a notice:

- (i) announcing the actual or anticipated vacancy in the position;
- (ii) describing the qualifications for the position, if any; and
- (iii) describing the procedure for applying for appointment to the position.

(b) A copy of the notice required under subsection ~~(3)(a)~~ *(2)(a)* must be sent to the lieutenant governor who may publish the notice in an appropriate publication.

~~(4)(3) He~~ *The governor* is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

~~(5)(4) Whenever~~ any suit or legal proceeding is pending against this state ~~or which~~ *that* may affect the title of this state to any property or ~~which~~ *that* may result in any claim against the state, ~~he~~ *the governor* may direct the attorney general to appear on behalf of the state and may employ ~~such~~ additional counsel ~~as he~~ *that the governor* may judge expedient.

~~(6)(5) He~~ *The governor* may require the attorney general or *the* county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

~~(7)(6) He~~ *The governor* may require the attorney general to aid the county attorney in the discharge of ~~his~~ *the county attorney's* duties.

~~(8)(7) He~~ *The governor* may offer rewards not exceeding \$1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

~~(9)(8) He~~ *The governor* shall perform ~~such~~ *the* duties respecting fugitives from justice ~~as that~~ are prescribed by Title 46, chapter 30.

~~(10)(9) He~~ *The governor* shall issue land warrants and patents, as prescribed in 77-2-342.

~~(11)(10) He~~ *The governor* may require any officer or board to make special reports ~~to him~~, upon demand, in writing.

~~(12)(11) He~~ *The governor* shall discharge the duties of a member of the board of examiners, of a nonvoting ex officio member of the state board of education, and of a member of the board of land commissioners.

~~(13)(12) He~~ *The governor* has the other powers and ~~must~~ *shall* perform the other duties ~~as that~~ are devolved upon ~~him~~ *the governor* by this ~~code~~ *section* or any other law of this state."

**Section 77.** Section 2-15-221, MCA, is amended to read:

**“2-15-221. Governor-elect — staff and services provided.** (1) As used in this section, unless the context clearly indicates otherwise, “governor-elect” means the person elected at a general election to the office of governor who is not the incumbent governor.

(2) The department of administration shall provide the governor-elect and ~~his~~ *the governor-elect’s* necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

(3) The governor-elect may obtain the assistance of persons of ~~his~~ *the governor-elect’s* own choosing, between the general election and inauguration, and they ~~shall~~ *must* receive reasonable compensation for their services. These persons ~~shall~~ *are* state employees, but they ~~shall~~ *are* not be subject to any civil service or personnel laws or rules of the state.

(4) In addition, the governor-elect may request that the department of administration assign one or more employees of the department of administration to assist the governor-elect and ~~his~~ *the governor-elect’s* staff in the study and interpretation of information. Employees of the department of administration ~~shall~~ *must* be assigned for the time necessary between the general election and the inauguration.

(5) The funds necessary to carry out the provisions of this section ~~shall~~ *must* be included in the appropriation request of the department of administration to the legislature meeting in regular session immediately prior to a general election when a governor will be chosen.”

**Section 78.** Section 2-15-302, MCA, is amended to read:

**“2-15-302. Powers and duties of lieutenant governor.** (1) The lieutenant governor may:

- (a) prescribe rules for the administration of the office;
- (b) hire personnel for the office and establish policy to be followed by ~~such~~ *the* personnel; and
- (c) compile and submit a budget for the office.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to ~~him~~ *the lieutenant governor* by the governor.”

**Section 79.** Section 2-15-502, MCA, is amended to read:

**“2-15-502. Qualification of assistants.** Each assistant attorney general must be duly licensed to practice law in the state of Montana at the time of ~~his~~ appointment.”

**Section 80.** Section 2-15-602, MCA, is amended to read:

**“2-15-602. Deputy state auditor.** (1) The state auditor shall appoint a deputy who in the absence of the principal or in the case of vacancy in ~~his~~ *the* office of *state auditor* shall perform all the duties of *the* office until ~~such~~ *the* disability ~~be is~~ removed or *the* vacancy ~~be is~~ filled.

(2) ~~Such~~ *The* deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of ~~his~~ *the* duties.”

**Section 81.** Section 2-15-1202, MCA, is amended to read:

**“2-15-1202. Adjutant general — qualifications — salary.** (1) The adjutant general ~~shall~~ *must*:

- (a) have the rank of major general;
- (b) be selected from the active list of the national guard of this state;
- (c) be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;
- (d) have had at least 10 years of service as an officer of the active national guard of this state during the 15 years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state when ~~he~~ *the adjutant general* is on extended active duty in federal service or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.”

**Section 82.** Section 2-15-1203, MCA, is amended to read:

**“2-15-1203. Assistant adjutant generals.** (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general ~~shall~~ *must* have the qualifications set forth in 2-15-1202 for appointment as adjutant general. However, ~~he shall~~ *each assistant adjutant general must* have the rank of brigadier general.”

**Section 83.** Section 2-15-1515, MCA, is amended to read:

**“2-15-1515. Commission on federal higher education programs.** (1) There is a commission on federal higher education programs that may be called into existence by the board of regents of higher education from time to time as the need arises. Whenever the commission is called into existence, the board shall request *that* the governor ~~to~~ appoint members pursuant to subsection (2)(b).

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university upon the request of the board of regents of higher education.

(3) The commission members appointed pursuant to subsection (2)(b) shall serve for the period of existence of the commission; ~~however, such.~~ *However, the* period of service may not exceed 4 years and is contingent upon continued status as a trustee. If a vacancy occurs in a position held by an individual appointed pursuant to subsection (2)(b), the governor shall appoint a replacement.

(4) ~~The chairman~~ *presiding officer* of the board of regents of higher education is ~~chairman~~ *the presiding officer* of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

(8) The board of regents of higher education may terminate the commission from time to time when there is no need for its existence.”

**Section 84.** Section 2-15-1521, MCA, is amended to read:

**“2-15-1521. Cultural and aesthetic projects advisory committee — ~~terms and compensation.~~** (1) There is a cultural and aesthetic projects advisory committee.

(2) The committee consists of 16 members, appointed as follows:

(a) eight members appointed by the Montana historical society board of trustees; and

(b) eight members appointed by the Montana arts council.

(3) Members ~~shall hold office for~~ *serve terms of* 4 years beginning January 1 following their appointment.

(4) A member may be removed by the appointing authority.

(5) All vacancies ~~shall~~ *must* be filled by the original appointing authority.

(6) The committee shall elect a ~~chairman and vice chairman~~ *presiding officer and a vice presiding officer.*

(7) Members of the committee are entitled to compensation of \$25 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at a committee meeting.”

**Section 85.** Section 2-15-1701, MCA, is amended to read:

**“2-15-1701. Department of labor and industry — head.** (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner ~~shall~~ *must* be appointed and serve as provided ~~for~~ *directors* in 2-15-111.

(3) The commissioner ~~shall~~ *must* receive an annual salary in ~~such an~~ amount as ~~may be specified by the legislature in the appropriation to the~~ department of labor and industry *equal to other department directors.*

(4) Before entering on the duties of ~~his~~ *the* office, ~~he~~ *the commissioner shall* ~~must~~ take and subscribe to the oath of office prescribed by the Montana constitution.”

**Section 86.** Section 2-15-1742, MCA, is amended to read:

**“2-15-1742. Board of veterinary medicine.** (1) There is a board of veterinary medicine.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom must be licensed veterinarians and one of whom must be a public member who is a consumer of veterinary services and who may not be a licensee of the board or of any other board under the department of labor and industry.

(3) Each veterinarian member must be a reputable licensed veterinarian who has graduated from a college *that is* authorized by law to confer degrees and ~~have~~ *that has* educational standards equal to those approved by the American veterinary medical association. Each veterinarian member ~~shall~~ *must* have

actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121.”

**Section 87.** Section 2-15-1744, MCA, is amended to read:

**“2-15-1744. Board of social work examiners and professional counselors.** (1) (a) The governor shall appoint a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) The board is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121.

(e) The board is designated *as* a quasi-judicial board. Members are appointed, serve, and are subject to removal in accordance with 2-15-124.

(2) Notwithstanding the qualifications for appointment contained in subsection (1), a person may be appointed to the board without being licensed as a professional counselor if ~~he~~ *the person* is issued a license under Title 37, chapter 23, within 30 days after his appointment.”

**Section 88.** Section 2-15-1748, MCA, is amended to read:

**“2-15-1748. Board of physical therapy examiners.** (1) There is a board of physical therapy examiners.

(2) The board consists of five members appointed by the governor with the consent of the senate for ~~a term~~ *terms* of 3 years. The members are:

(a) three physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board;

(b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and

(c) one member of the general public who is not a physician or a physical therapist.

(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.

(4) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may ~~only~~ be made *only* for the unexpired portions of the term.

(6) ~~No~~ A member may *not* be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(9) The board shall provide for its organizational structure by rule, which ~~shall~~ *must* include a ~~chairman, vice-chairman, presiding officer, vice presiding officer,~~ and secretary-treasurer.

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

**Section 89.** Section 2-15-1814, MCA, is amended to read:

**“2-15-1814. Board of housing — allocation — composition — quasi-judicial.** (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members ~~shall~~ *must* be informed and experienced in housing, economics, or finance.

(3) The board shall elect a ~~chairman~~ *presiding officer* and other necessary officers.

(4) The board is designated *as* a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(6) In compliance with the state pay plan, the department shall provide all staff and services to the board *as that* are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board’s programs. The department shall assess the board for reasonable costs.

(7) A member of the board ~~shall~~ *may* not be ~~deemed~~ *considered* to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution ~~who~~ *that* may participate in the board’s programs.”

**Section 90.** Section 2-15-3002, MCA, is amended to read:

**“2-15-3002. Montana wheat and barley committee — ~~composition — allocation.~~** (1) There is a Montana wheat and barley committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

(3) The governor shall appoint one member from each of the following districts:

- (a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;
- (b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;
- (c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;
- (d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university-Bozeman;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members must be a citizen of Montana, derive a substantial portion of ~~his~~ *the member's* income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, Montana women involved in farm economics, and the Montana grain growers association. Names of nominees must be submitted not more than 90 days but not less than 30 days before the expiration of a ~~committeeman's~~ *member's* term.

(7) The appointed members shall serve staggered terms of 3 years. A member may not serve more than three consecutive 3-year terms.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member must be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses ~~in his~~ *on the member's* behalf.

(9) A member who ceases to reside in the state or in the district from which ~~he~~ *the member* was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership, and ~~his~~ *the* office becomes vacant. If the member refuses to recognize ~~his~~ *the member's* disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121."

**Section 91.** Section 2-15-3003, MCA, is amended to read:

**"2-15-3003. Board of hail insurance.** (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor and confirmed by the senate.

(2) The governor shall designate one of the appointive members to act as ~~chairman~~ *presiding officer* of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of ~~his~~ *the member's* term of office, the governor shall appoint ~~his~~ *a* successor and shall also appoint one of the board ~~for~~ *chairman as presiding officer* in case of a vacancy in that office.

(4) Each appointive member of the board ~~shall~~ *must* be appointed for 3 years, except when ~~such an~~ appointment is made to fill a vacancy on the board, in which ~~event such case~~ *the* appointee shall fill out the unexpired term of the member whose place ~~he~~ *the appointee* fills.

(5) All members of the board ~~shall be~~ *are* subject to removal for cause by the governor.

(6) The board is allocated to the department of agriculture for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121. The department may charge the board for services provided by the department pursuant to 2-15-121. The costs charged by the department must be commensurate with the cost of the services provided.”

**Section 92.** Section 2-15-3305, MCA, is amended to read:

**“2-15-3305. Rangeland resources committee.** (1) The governor may select a committee of six members in accordance with subsection (2) ~~which that~~ is composed ~~as follows~~ of:

- (a) a ~~chairman~~ *presiding officer* who is a rancher;
- (b) a ~~vice-chairman~~ *vice presiding officer* who is a rancher;
- (c) a rancher from the eastern area of the state;
- (d) a rancher from the northern area of the state;
- (e) a rancher from the area of the state west of the continental divide;
- (f) a rancher from the southern area of the state.

(2) The governor shall select the members described in ~~subsections (1)(a) through (1)(f)~~ *subsection (1)* from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121.”

**Section 93.** Section 2-15-3104, MCA, is amended to read:

**“2-15-3104. Livestock crimestoppers commission.** (1) There is a livestock crimestoppers commission.

(2) The commission consists of five members appointed by the ~~chairman~~ *presiding officer* of the board of livestock. The members are:

- (a) the administrator of the brands enforcement division, or ~~his~~ *the administrator's* designee;
- (b) a member of the board of livestock, or ~~his~~ *the member's* designee;
- (c) a law enforcement official; and
- (d) two members of the public, appointed at large.

(3) The commission shall elect a ~~chairman~~ *presiding officer* from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.



(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the commission.

(6) The commission is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.”

**Section 94.** Section 2-15-3331, MCA, is amended to read:

**“2-15-3331. Flathead basin commission — ~~term of appointment — quorum — vacancy — chairman — vote.~~** (1) The commission members shall serve staggered 4-year terms.

(2) A majority of the membership, other than ex officio members, constitutes a quorum of the commission.

(3) A vacancy on the commission must be filled in the same manner as regular appointments, and the member so appointed shall serve for the unexpired term to which ~~he~~ *the member* is appointed.

(4) The commission shall select a ~~chairman~~ *presiding officer* from among its members. The ~~chairman~~ *presiding officer* may make motions and vote.

(5) A favorable vote of at least a majority of all members, except ex officio members, of the commission is required to adopt any resolution, motion, or other decision of the commission.”

**Section 95.** Section 2-15-3402, MCA, is amended to read:

**“2-15-3402. Fish, wildlife, and parks commission — ~~composition — qualifications — quasi-judicial.~~** (1) There is a fish, wildlife, and parks commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of ~~the~~ fish, wildlife, and state parks and other outdoor recreational resources of this state. A person may not be appointed to the commission unless ~~he~~ *the person* is informed or interested and experienced in the subject of ~~wildlife~~; fish, *wildlife*, parks, and outdoor recreation and the requirements for the conservation and protection of ~~wildlife~~, fish, *wildlife*, parks, and outdoor recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, wildlife, and parks commission is designated as a quasi-judicial board for 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 commission.”

**Section 96.** Section 2-16-102, MCA, is amended to read:

**“2-16-102. Qualifications generally — age and citizenship.** (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the *codes laws* concerning the various offices.

(2) ~~No~~ A person is *not* eligible to hold civil office in this state who at the time of his election or appointment is not of the age of 18 years of *age* or older and a citizen of this state.”

**Section 97.** Section 2-16-114, MCA, is amended to read:

**“2-16-114. Facsimile signatures and seals.** (1) As used in this section, the following definitions apply:

(a) “Authorized officer” means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(b) “Facsimile signature” means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(c) “Instrument of payment” means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(d) “Public security” means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(2) ~~Any~~ An authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of ~~such~~ the subdivision, ~~his~~ the officer’s manual signature certified by ~~him~~ the officer under oath, may execute or cause to be executed with a facsimile signature in lieu of ~~his~~ the manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed ~~thereon~~ ~~shall~~ on the security must be manually subscribed, but ~~no~~ such manual subscription ~~shall~~ be *is not* required ~~as to~~ for interest coupons attached to ~~such~~ the security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, ~~his~~ the facsimile signature has the same legal effect as ~~his~~ a manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile ~~thereon~~ on the security or instrument. The facsimile seal has the same legal effect as the impression of the seal.

(5) ~~Any~~ A person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.”

**Section 98.** Section 2-16-115, MCA, is amended to read:

**“2-16-115. Signature of officer acting ex officio.** When an officer discharges ex officio the duties of ~~another~~ *an office other* than that to which ~~he~~ *the officer* is elected or appointed, ~~his~~ *the officer's* official signature and attestation, except as otherwise provided by law, must be in the name of the officer ~~the duties of which he~~ *the officer discharges the duties.*”

**Section 99.** Section 2-16-202, MCA, is amended to read:

**“2-16-202. Title contested — salary withheld.** (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, ~~no~~ *a warrant can thereafter may not* be drawn or paid for any part of ~~his~~ *the incumbent's* salary until ~~such~~ *the* proceedings have been finally determined.

(2) As soon as ~~such~~ *the* proceedings are instituted, the clerk of the court in which they are pending ~~must~~ *shall* certify the facts to the officers whose duty it would otherwise be to draw ~~such~~ *the* warrant or pay ~~such~~ *the* salary.”

**Section 100.** Section 2-16-212, MCA, is amended to read:

**“2-16-212. Filing.** (1) ~~Whenever~~ *Unless* a different time is ~~not~~ prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of ~~his~~ *election or appointment* or before the expiration of 15 days from the commencement of ~~his~~ *the* term of office when ~~no~~ *such* a notice of *election or appointment* has not been given.

(2) ~~Every~~ *An* oath of office, certified by the officer before whom the ~~same~~ *oath* was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.”

**Section 101.** Section 2-16-213, MCA, is amended to read:

**“2-16-213. Term of office — holdover — assumption of office.** (1) ~~Every~~ *An* office ~~of~~ *for* which the duration is not fixed by law is held at the pleasure of the appointing ~~power~~ *authority*.

(2) ~~Every~~ *An* officer ~~must~~ *shall* continue to discharge the duties of ~~his~~ *the* office, although ~~his~~ *the* term has expired, until ~~his~~ *a* successor has qualified.

(3) Notwithstanding *the provisions of* subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer; ~~notwithstanding the fact that~~ *even though* the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant.”

**Section 102.** Section 2-16-303, MCA, is amended to read:

**“2-16-303. Powers.** In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of ~~his~~ *the* principal.”

**Section 103.** Section 2-16-406, MCA, is amended to read:

**“2-16-406. Salary for all services — how paid.** (1) The salary of each ~~such officer shall be~~ *is* for all services ~~that are~~ *that are* required of ~~him~~ *the officer* or ~~which that may hereafter devolve upon him~~ *be assigned to the office* by law, including all services rendered ex officio as a member of any board, commission, or committee, but ~~shall~~ *may* not include actual necessary travel, lodging, and subsistence expenses incidental to ~~his~~ *official* duties.

(2) Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury monthly on the last day of the month.”

**Section 104.** Section 2-16-504, MCA, is amended to read:

**“2-16-504. Elective officers’ inability to perform — filling vacancy — notice.** (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of ~~his~~ *the* position, a vacancy exists.

(2) When a written declaration, made as ~~hereinafter~~ *hereinafter* provided ~~in subsection (4)~~, is transmitted to the legislature that any ~~such officer enumerated in subsection (1)~~ is unable to discharge the powers and duties of ~~this~~ *the* office, the legislature may convene in the manner provided for the convening of special sessions to determine whether ~~such~~ *the* disability exists or it may defer ~~such~~ *a* determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that ~~such~~ *the* officer is unable to discharge the powers and duties of ~~his~~ *the* office, ~~this~~ *the* office ~~shall be~~ *is* declared to be vacant and ~~shall~~ *must* be filled as provided by the constitution of Montana or laws enacted pursuant ~~thereto~~ *to the constitution*.

(4) The written declaration required ~~hereunder~~ *under this section* ~~shall~~ *must* be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration ~~shall~~ *must* be made by the governor and attorney general; ~~and~~ *and* if the attorney general is the subject of the declaration, the declaration ~~shall~~ *must* be made by the governor and secretary of state.”

**Section 105.** Section 2-16-505, MCA, is amended to read:

**“2-16-505. Filling vacancies in certain elective offices.** A vacancy in the office of ~~either~~ *either* the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor; ~~who~~ *The appointee* holds ~~his~~ *his* office until the first Monday in January ~~next~~ *after a* ~~the next~~ *the next* general election. At ~~such~~ *that* election, the office must be filled by election for the unexpired term.”

**Section 106.** Section 2-16-507, MCA, is amended to read:

**“2-16-507. Powers and duties of officer filling unexpired term.** ~~Any~~ *A* person elected or appointed to fill a vacancy, after filing ~~his~~ *his* ~~the~~ *the* official oath and bond, possesses all the rights and powers and is subject to all the liabilities,

duties, and obligations as if ~~he~~ *the person* had been elected to the office for a full term.”

**Section 107.** Section 2-16-513, MCA, is amended to read:

**“2-16-513. Succession in case of termination or incapacitation of primary successors.** (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) ~~He~~ *The senior member of the legislature* shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including ~~his~~ *the member’s* current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.”

**Section 108.** Section 2-16-521, MCA, is amended to read:

**“2-16-521. Powers of acting governor.** (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward ~~him~~ *the governor* extends to the persons performing for the time being the duties of governor.

(2) An acting governor ~~shall have~~ *has* all the rights, duties, and emoluments of the office of governor while ~~he is so~~ *acting as governor.*”

**Section 109.** Section 2-16-603, MCA, is amended to read:

**“2-16-603. Officers subject to recall — grounds for recall.** (1) ~~Every~~ *Any* person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from ~~such~~ office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for ~~his~~ *the elective officer’s* successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of ~~his~~ *the* oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 ~~is~~ *are* the only ~~basis~~ *grounds* for recall. ~~No~~ *A* person may *not* be recalled for performing a mandatory duty of the office ~~he~~ *that the person* holds or for not performing any act that, if performed, would subject ~~him~~ *the person* to prosecution for official misconduct.”

**Section 110.** Section 2-16-612, MCA, is amended to read:

**“2-16-612. Persons qualified to petition — penalty for false signatures.** (1) ~~Every~~ *A* person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) ~~Every~~ *A* person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) ~~Every~~ *A* person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision.

However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.

(4) ~~Any~~ A person signing any name other than ~~his~~ *the person's* own to any petition or knowingly signing ~~his name~~ more than once for the recall or who is not at the time of the signing a qualified elector or ~~any~~ a person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable."

**Section 111.** Section 2-16-613, MCA, is amended to read:

**"2-16-613. Limitations on recall petitions.** (1) A recall petition may not name more than one officer to be recalled.

(2) ~~No~~ A recall petition against an officer may *not* be approved for circulation, as required in 2-16-617(3), until ~~he~~ *an officer* has held office for 2 months.

(3) ~~No~~ A recall petition may *not* be filed against an officer for whom a recall election has been held for a period of 2 years during ~~his~~ *the officer's* term of office unless the state or political subdivision or subdivisions financing ~~such~~ *the* recall election ~~is~~ *are* first reimbursed for all expenses of the preceding recall election."

**Section 112.** Section 2-16-616, MCA, is amended to read:

**"2-16-616. Form of recall petition.** (1) The form of the recall petition ~~shall~~ *must* be substantially as follows:

#### WARNING

A person who knowingly signs a name other than ~~his~~ *the person's* own to this petition, ~~or~~ who signs ~~his~~ *the person's* name more than once upon a petition to recall the same officer at one election, or who is not, at the time ~~he~~ *signs of signing* this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or *a fine of \$500 or imprisonment in the state prison for a term not to exceed 10 years, or both.*

#### RECALL PETITION

To the Honorable ....., Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether ....., holding the office of ....., should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). ~~By his signature each~~ *Each* signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines ~~shall~~ *must* follow the ~~above heading language in subsection (1).~~ Each numbered line ~~shall~~ *must* contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of

the petition shall *must* contain the heading and reasons for the proposed recall as prescribed ~~above~~ *in subsection (1).*”

**Section 113.** Section 2-16-617, MCA, is amended to read:

**“2-16-617. Form of circulation sheets.** (1) The signatures on each petition shall *must* be placed on sheets of paper known as circulation sheets. Each circulation sheet shall *must* be substantially 8 1/2 x 14 inches or a continuous sheet may be folded so as to meet this size limitation. ~~Such~~ The circulation sheets shall *must* be ruled with a horizontal line 1 1/2 inches from the top ~~thereof of the sheet.~~ The space above ~~such the~~ line shall *must* remain blank and shall *must* be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating ~~his the~~ reasons ~~therefor for~~ *rejection*, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall *must* be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.”

**Section 114.** Section 2-16-620, MCA, is amended to read:

**“2-16-620. County clerk to verify signatures.** (1) The county clerk in each county in which ~~such a~~ *recall* petition is signed shall verify and compare the signatures of each person who has signed the petition to ~~assure ensure~~ that ~~he the~~ *person* is an elector in ~~such that~~ *that* county and, if satisfied ~~that~~ the signatures are genuine, *shall* certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ....., ..... (title) of ..... County, certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall No. .... attached, in the manner prescribed by law, and I believe ..... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: ..... (Date) ..... (Signature)  
Seal ..... (Title)

(2) ~~Such~~ *The* certificate is prima facie evidence of the facts stated ~~therein~~ *in the certificate*, and the secretary of state or other officer receiving the recall petition may consider and count only ~~such the~~ *the* signatures ~~as that~~ *as* are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters ~~which that~~ *which* prove to be genuine, and ~~such those~~ *those* signatures shall *must* be considered and counted if they are attested to in the manner and form ~~as~~ *as* provided for initiative and referendum petitions.

(3) The county clerk *and recorder* may not retain any portion of a petition for more than 30 days following the receipt of that portion. At the expiration of ~~such~~ *that* period, the county clerk *and recorder* shall certify the valid signatures on that portion of the petition and deliver the same to the person with whom the petition is required to be filed.”

**Section 115.** Section 2-16-621, MCA, is amended to read:

**“2-16-621. Notification to officer — statement of justification.** Upon filing the petition or a portion of the petition containing the number of valid signatures required under 2-16-614, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice ~~shall~~ *must* state that a recall petition has been filed, ~~shall~~ *must* set forth the reasons contained ~~therein~~ *in the petition*, and ~~shall~~ *must* notify the officer named in the recall petition that ~~he~~ *the officer* has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why ~~he~~ *the officer* should not be recalled. ~~No such~~ *A* statement of justification ~~shall~~ *may not* be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given.”

**Section 116.** Section 2-16-622, MCA, is amended to read:

**“2-16-622. Resignation of officer — proclamation of election.** (1) If the officer named in the petition for recall submits ~~his~~ *a* resignation in writing, it ~~shall~~ *must* be accepted and become effective the day it is offered. The vacancy created by ~~such~~ *the* resignation ~~shall~~ *must* be filled as provided by law, ~~provided that.~~ *However,* the officer named in the petition for recall may not be appointed to fill ~~such~~ *the* vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election ~~shall~~ *must* be called unless the filing is within 90 days of a general election, in which case the question ~~shall~~ *must* be placed on a separate ballot at the same time as the general election.

(2) The call of a special election ~~shall~~ *must* be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.”

**Section 117.** Section 2-16-633, MCA, is amended to read:

**“2-16-633. Form of ballot.** (1) The ballot at ~~such~~ *a* recall election ~~shall~~ *must* set forth the statement contained in the recall petition stating the reasons for demanding the recall of ~~such~~ *the* officer and the officer’s statement of reasons why ~~he~~ *the officer* should not be recalled. ~~Then the~~ *The* question of whether the officer should be recalled ~~shall~~ *must* be placed on the ballot in a form similar to the following:

- FOR recalling ..... who holds the office of .....
- AGAINST recalling ..... who holds the office of .....

(2) The form of the ballot ~~shall~~ *must* be approved as provided in the election laws of this state.”

**Section 118.** Section 2-16-635, MCA, is amended to read:

**“2-16-635. Officer to remain in office until results declared — filling of vacancy.** The officer named in the recall petition continues in office until ~~he~~ *the officer* resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy ~~shall~~ *must* be filled as provided by law.”



provided that *However*, the officer recalled may in no event *not* be appointed to fill the vacancy.”

**Section 119.** Section 2-17-816, MCA, is amended to read:

**“2-17-816. Parking citations within capitol complex.** The director of the department of administration may in his discretion enter into an agreement with the city of Helena, Montana, to authorize capitol security guards employed by the department to issue citations for parking violations as defined by state or municipal laws which *that* occur within the boundaries of the capitol complex or on streets or alleys contiguous ~~thereto~~ *to the capitol complex*. All such citations must be considered within the jurisdiction of the city of Helena, Montana, and must be handled in the same manner as citations issued by peace officers ~~thereof~~ *of the city*.”

**Section 120.** Section 2-18-106, MCA, is amended to read:

**“2-18-106. No limitation on legislative authority — transfer of funds.**

(1) Parts 1, ~~2,~~ and *through* 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust ~~his~~ determinations in accordance with legislative appropriations.

(2) Unexpended agency appropriation balances in the first year of the biennium may be transferred to the second year of the biennium to offset the costs of pay increases.”

**Section 121.** Section 2-18-107, MCA, is amended to read:

**“2-18-107. Job-sharing positions — benefits.** (1) Job sharing may be used, to the extent practicable, by each agency as a means of promoting increased productivity and employment opportunities. ~~However, job~~ *Job* sharing may be actively pursued to fill vacated or new positions ~~and but~~ may not be actively pursued to replace current full-time employees. However, on request of a current employee, ~~his~~ *that employee's* position may be considered for job sharing. A position may be filled by more than one incumbent currently in a full-time position.

(2) Employees in a job-sharing status are entitled to holiday pay, annual leave, sick leave, and health benefits on the same basis as permanent part-time employees provided for in 2-18-603, 2-18-611, 2-18-618, and 2-18-703.

(3) Employees classified in a part-time status may not be reclassified to a job-sharing status while employed in the position classified as part-time.”

**Section 122.** Section 2-18-512, MCA, is amended to read:

**“2-18-512. Prohibition on travel expenses for conventions — exception.** ~~Hereafter, no~~ A state officer or employee of the state ~~shall~~ *may not* receive payment from any public funds for traveling expenses or other expenses ~~of any sort or kind~~ for attendance ~~upon~~ *at* any convention, meeting, or other gathering of public officers except for attendance ~~upon such~~ *at a* convention, meeting, or other gatherings ~~as said~~ *that the officer or employee may by virtue of his the office or employment find it necessary to attend*.”

**Section 123.** Section 2-18-612, MCA, is amended to read:

**“2-18-612. Rate earned.** (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years <del>on</del> or more	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following ~~his~~ *the* date of employment; ~~an~~. An employee must be credited with 80 hours of service for each biweekly pay period in which ~~he~~ *the employee* is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; ~~or~~.

(ii) 12 calendar months in which ~~he~~ *the employee* was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any ~~one~~ 1 month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if ~~he~~ *the employee* is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, ~~must~~ *shall* use the method provided in subsection (2)(a)(i) to calculate years of service under this section.”

**Section 124.** Section 2-18-616, MCA, is amended to read:

**“2-18-616. Determination of vacation dates.** The dates when employees’ annual vacation leaves ~~shall be~~ *are* granted ~~shall must~~ be determined by agreement between each employee and ~~his~~ *the* employing agency with regard to the best interest of the state; ~~or~~ any county or city ~~thereof~~ *of the state* as well as the best interests of each employee.”

**Section 125.** Section 2-18-619, MCA, is amended to read:

**“2-18-619. Jury duty — service as witness.** (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees ~~shall must~~ be applied against the amount due the employee from ~~his~~ *the* employer. However, if an employee elects to ~~charge his juror time off against his~~ *use* annual leave to *serve on a jury*, ~~he shall the employee may~~ not be required to remit ~~his the~~ juror fees to ~~his the~~ employer. ~~In no instance is an~~ *An employee is not* required to remit to ~~his the~~ employer any expense or mileage allowance paid ~~him~~ by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees ~~shall must~~ be applied against the amount due the employee from ~~his the~~ employer. However, if an employee elects to ~~charge his witness time off against his~~ *use* annual leave to *serve as a witness*, ~~he shall the employee may~~ not be required to remit ~~his the~~ witness fees to ~~his the~~ employer. ~~In no instance is an~~ *An employee is not* required to remit to ~~his the~~ employer any expense or mileage allowances paid ~~him~~ by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.”

**Section 126.** Section 2-18-621, MCA, is amended to read:

**“2-18-621. Unlawful termination.** It ~~shall be~~ *is* unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. ~~Should~~ *If* a question ~~arise~~ *arises* under this section, it ~~shall~~ *must* be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is ~~a~~ *an applicable* collective bargaining agreement to the contrary ~~applicable.~~”

**Section 127.** Section 2-18-902, MCA, is amended to read:

**“2-18-902. Notice — shared costs of third-party action — limitation.**

(1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of ~~his~~ *the* intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. ~~If such~~ an election is made, the insurer waives 50% of any subrogation rights granted to it by 2-18-901.

(4) The insurer’s right of subrogation granted in 2-18-901 may not be enforced until the injured insured has been fully compensated for ~~his~~ *the insured’s* injuries.”

**Section 128.** Section 2-18-1001, MCA, is amended to read:

**“2-18-1001. ~~Transportation department~~ *Department of transportation* personnel grievances — hearing.** (1) An employee of the department of transportation *who is* aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee’s supervisor or the department of transportation against an aggrieved employee because the employee has filed or attempted to file a grievance with the board ~~shall is~~ also be a basis for a grievance and ~~shall entitle~~ *entitles* the employee to a hearing before the board for resolution.

(3) A grievance under this part must be filed with the board of personnel appeals within 180 days after the alleged incident or action occurred. Failure to file the grievance within this period is a bar to proceeding with the grievance.”

**Section 129.** Section 2-18-1011, MCA, is amended to read:

**“2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint.** (1) An employee or ~~his~~ *an employee’s* representative affected by the ~~operation~~ *implementation* of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee’s supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board ~~shall is~~ also be a basis for a complaint and ~~shall entitle~~ *entitles* the employee to file a complaint with the

board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way ~~which~~ *that* would adversely affect the employee prior to final resolution or entry of a final order with respect ~~thereto~~ *to the action* is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) ~~of this section~~ unless ~~such~~ *the* review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.”

**Section 130.** Section 3-1-402, MCA, is amended to read:

**“3-1-402. Powers of judicial officers as to conduct of proceedings.** Every A judicial officer has *the* power to:

(1) preserve and enforce order in ~~his~~ *the officer’s* immediate presence and in proceedings before ~~him~~ *the officer* when ~~he~~ *the officer* is engaged in the performance of official ~~duty~~ *duties*;

(2) compel obedience to ~~his~~ *the officer’s* official orders, as provided in this code;

(3) compel the attendance of persons to testify in a proceeding before ~~him~~ *the officer* in the cases and manner provided in this code;

(4) administer oaths to persons in a proceeding pending before ~~him~~ *the officer* and in all other cases ~~where in which~~ *it may be necessary* in the exercise of ~~his~~ *the officer’s* powers and duties.”

**Section 131.** Section 3-1-404, MCA, is amended to read:

**“3-1-404. Taking acknowledgments and affidavits.** Each of the justices of the supreme court and judges of the district courts ~~has power~~ *may* in any part of the state; and every *each* justice of the peace *may* within ~~his~~ *the justice’s* county; ~~to~~ take and certify:

(1) the proof and acknowledgment of a conveyance of real property or of any other written instrument;

(2) the acknowledgment of satisfaction of a judgment of any court;

(3) an affidavit or deposition to be used in this state.”

**Section 132.** Section 3-1-405, MCA, is amended to read:

**“3-1-405. Certificate of authenticity of justice’s court’s certificate of acknowledgment.** The certificate of proof or acknowledgment, ~~if made before a~~ justice of the peace, when used in any county other than that in which ~~he~~ *the justice* resides, must be accompanied by a certificate, under the hand and seal of the clerk *and recorder* of the county in which the justice resides, setting forth that ~~such~~ *the* justice, at the time of taking ~~such~~ *the* proof or acknowledgment, was authorized to take the ~~same~~ *proof or acknowledgment* and that the clerk *and recorder* is acquainted with ~~his~~ *the justice’s* handwriting and believes that the signature to the original certificate is genuine.”

**Section 133.** Section 3-1-504, MCA, is amended to read:

**“3-1-504. Reentry on property after eviction.** Every A person *who* is dispossessed of or ejected from or out of any real property by the judgment or process of ~~any~~ *a* court of competent jurisdiction and who, not having *the* right so to do, reenters into or upon or takes possession of ~~any~~ *such* *the* real property or

induces or procures any person not having a right so to do or aids or abets ~~him therein that person to enter into or upon or take possession of the real property is guilty of a contempt of the court by which such judgment was that rendered the judgment or from which such that issued the process issued.~~ Upon conviction for ~~such~~ contempt, the court or justice of the peace ~~must shall~~ immediately issue an alias process directed to the proper officer ~~and~~ requiring ~~him that officer~~ to restore the party entitled to the possession of ~~such that~~ property, under the original judgment or process, to ~~such~~ possession.”

**Section 134.** Section 3-1-514, MCA, is amended to read:

**“3-1-514. Endorsement allowing bail on warrant.** Whenever a warrant of attachment is issued pursuant to this part, the court or judge ~~must shall~~ direct, by an endorsement on ~~such the~~ warrant, that the person charged may be left to bail for ~~his the person’s~~ appearance in an amount to be specified in ~~such the~~ endorsement.”

**Section 135.** Section 3-1-515, MCA, is amended to read:

**“3-1-515. Arrest and detention by sheriff.** Upon executing the warrant of attachment, the sheriff ~~must shall~~ keep the person in custody, bring ~~him the~~ person before the court or judge, and detain ~~him the person~~ until an order ~~be is~~ made in the ~~premises proceeding~~ unless the person arrested ~~entitle himself is~~ entitled to be discharged as provided in 3-1-516.”

**Section 136.** Section 3-1-516, MCA, is amended to read:

**“3-1-516. Bail bond — form and conditions of.** When a direction to ~~let~~ release the person arrested ~~to on~~ bail is contained in the warrant of attachment or endorsed ~~thereon on the warrant, he the arrested person~~ must be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge ~~thereupon or they the sureties~~ will pay, as may be directed, the sum specified in the warrant or ordered by ~~the~~ court or ~~the~~ judge.”

**Section 137.** Section 3-1-517, MCA, is amended to read:

**“3-1-517. Return of warrant and undertaking.** The officer ~~must shall~~ return the warrant of arrest and undertaking, if any, received by ~~him the officer~~ from the person arrested by the return day specified ~~therein in the warrant.~~”

**Section 138.** Section 3-1-522, MCA, is amended to read:

**“3-1-522. Illness sufficient excuse — confinement under arrest.** (1) Whenever ~~by the provisions of this part~~ an officer is required to keep a person arrested on a warrant of attachment in custody and to bring ~~him the person~~ before a court or judge, the inability, from illness or otherwise, of the person to attend is sufficient excuse for not bringing ~~him up the person before the court or~~ judge.

(2) The officer ~~must may~~ not confine a person arrested upon a warrant in a prison or otherwise restrain ~~him the person~~ of personal liberty, except ~~so far as~~ ~~may be to the extent~~ necessary to secure ~~his the person’s~~ personal attendance.”

**Section 139.** Section 3-1-601, MCA, is amended to read:

**“3-1-601. Certain officers not to practice law or administer estates.** (1) Except as provided in 3-1-604 and except for a judge pro tempore, ~~ne a~~ justice or judge of a court of record or clerk of any court may *not* practice law in any court

in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during ~~his~~ *the justice's or judge's* continuance in office.

(2) ~~Neither the~~ *The* court administrator ~~nor any or an~~ assistant may *not* practice law in any of the courts of this state while holding ~~his~~ *that* position.

(3) ~~No~~ *A* justice or judge of a court of record, except a judge pro tempore, may *not* act as administrator or executor of any estate for compensation.”

**Section 140.** Section 3-1-602, MCA, is amended to read:

**“3-1-602. Restrictions on justices of the peace practicing law or taking claims for collection.** (1) Except as provided in subsection (2), a justice of the peace may not:

- (a) practice law;
- (b) draw contracts, conveyances, or other legal instruments or documents;
- (c) take any claim or bill for collection or act as a collection agent in any sense; or
- (d) perform any legal duties other than those prescribed by law as ~~his~~ *the justice's* official duties in the conduct of cases and proceedings in ~~his~~ *the justice's* court.

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that ~~such a~~ *the* justice, ~~his~~ *the justice's* law partner or associate, or a member, associate, or employee of a firm of which ~~he~~ *the justice* is a member may not represent a party involved in a case ~~which~~ *that* is filed or tried in ~~his~~ *the justice's* court or in any justice's court located in the same county as ~~his~~ *the justice's* court or ~~which~~ *that* is appealed from ~~such~~ *a justice's court in that county*.

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and ~~shall~~ *must* be removed from ~~his~~ *the* office of justice of the peace and ~~thereafter~~ *be is* disqualified from holding ~~such~~ *that* office.”

**Section 141.** Section 3-1-603, MCA, is amended to read:

**“3-1-603. No judicial Judicial officer of court of record not to have partner practicing law.** (1) Except as provided in subsection (2), ~~no~~ *a* judicial officer of a court of record may *not* have a partner acting as attorney or counsel in any court of this state.

(2) A partner of either a municipal court judge or a judge pro tempore may act as attorney or counsel in any court of this state except the court of ~~his~~ *the* partner *who is a judicial officer.*”

**Section 142.** Section 3-1-604, MCA, is amended to read:

**“3-1-604. Restrictions on municipal court judges.** ~~No~~ *A* municipal court judge may *not* practice law before ~~his~~ *the judge's* own municipal court or hold office in a political party during ~~his~~ *the judge's* term of office.”

**Section 143.** Section 3-1-605, MCA, is amended to read:

**“3-1-605. Restrictions on judicial officers after term has expired.** A judicial officer, as defined in 1-1-202, after the expiration of ~~his~~ *the officer's* term of office, may not act as attorney or counsel in any action or special proceeding

which ~~that~~ has been before ~~him~~ *the officer* in ~~his~~ *the officer's* official character capacity."

**Section 144.** Section 3-1-606, MCA, is amended to read:

**"3-1-606. Justice of the peace or constable not to purchase judgment.** (1) A justice of the peace may not purchase or be interested in the purchase of any judgment or part ~~thereof of a judgment~~ on ~~his~~ *the justice's* docket or on any docket in ~~his~~ *the justice's* possession. A constable may not purchase or be interested in the purchase of any judgment or part ~~thereof of a judgment~~ on the docket of a justice of the peace of the county of which ~~he~~ *the person* is a constable or on a docket in the possession of ~~such~~ *a justice of the peace in that county*.

(2) ~~Violation~~ *A violation* of subsection (1) is a misdemeanor."

**Section 145.** Section 3-1-607, MCA, is amended to read:

**"3-1-607. Supreme court justice or district court judge candidacy for nonjudicial office — resignation required.** (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana other than a judicial position, ~~he~~ *the person* shall immediately, ~~and~~ or in any event at or before the time when ~~he~~ *must the person is required to* file as a candidate for ~~such~~ *the* office in any primary, or special, or general election, resign from ~~his~~ *the* office of chief justice, associate justice, or district court judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement ~~applies except~~ *does not apply* when the person is a bona fide candidate for reelection to the identical office ~~then~~ *currently* occupied by ~~him~~ *the person* or for another judicial position."

**Section 146.** Section 3-1-701, MCA, is amended to read:

**"3-1-701. Office of court administrator — appointment and term of office.** There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator ~~shall hold his~~ *holds the* position at the pleasure of the court."

**Section 147.** Section 3-1-1003, MCA, is amended to read:

**"3-1-1003. Vacancies.** (1) In the event ~~that~~ a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. ~~Such~~ *The* replacement ~~shall~~ *must* be a member of the same group as the member ~~he~~ *replaces* *being replaced*.

(2) ~~Appointments~~ *An appointment* provided for in this section ~~shall~~ *must* be made within 30 days of the occurrence of ~~any~~ *the* vacancy."

**Section 148.** Section 3-1-1009, MCA, is amended to read:

**"3-1-1009. Investigation by commission — application for consideration.** (1) The commission and each member are authorized to make investigations concerning the qualifications of eligible persons.

(2) Any lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may ~~make application~~ *apply* to the commission for consideration, or application may be made by any person on ~~his~~ *the lawyer's* behalf."

**Section 149.** 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, or the chief water judge gives notice of ~~his~~ *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 ~~no~~ 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) ~~Any~~ *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 ~~the~~ *each* nominee, and the commission’s reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee.”

**Section 150.** Section 3-1-1103, MCA, is amended to read:

**“3-1-1103. Terminated membership — vacancies.** (1) Commission membership terminates if a member ceases to hold the position that qualified ~~him~~ *the person* for appointment.

(2) ~~In the event~~ *If* a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.”

**Section 151.** Section 3-1-1104, MCA, is amended to read:

**“3-1-1104. No compensation — travel expenses.** A commission member is not entitled to compensation for ~~his~~ *the member’s* services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ incurred in the performance of ~~his~~ *the member’s* duties.”

**Section 152.** Section 3-1-1106, MCA, is amended to read:

**“3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations.** (1) (a) The commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission’s investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint before conducting ~~such~~ additional proceedings.

(b) The commission shall give the judicial officer written notice of the citizen’s complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after ~~such~~ *an* investigation ~~as~~ *that* it considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) confidentially advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the



commission a letter stating that *he the officer* will take corrective action satisfactory to the commission; or

(c) request *that* the supreme court ~~to~~ appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after *a* hearing or after considering the record and *the* report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or disability retirement of the judicial officer.”

**Section 153.** Section 3-1-1108, MCA, is amended to read:

**“3-1-1108. Nonparticipation of interested judicial officer.** A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving ~~his~~ *the officer’s* own censure, suspension, removal, or retirement or that of ~~his~~ *the officer’s* spouse, a relative within the sixth degree of consanguinity, or the spouse of ~~such~~ a relative *related within the sixth degree.*”

**Section 154.** Section 3-1-1109, MCA, is amended to read:

**“3-1-1109. Interim disqualification of judicial officer.** (1) A judicial officer must be disqualified from serving as a judicial officer, without loss of salary, while there is pending an indictment or an information charging ~~him~~ *the officer* with a crime punishable as a felony under Montana or federal law.

(2) When the commission files with the supreme court a recommendation that a judicial officer be removed or retired, the judicial officer must be disqualified from serving as a judicial officer, without loss of salary, pending the supreme court’s review of the record and proceedings.”

**Section 155.** Section 3-1-1110, MCA, is amended to read:

**“3-1-1110. Procedure when convicted of crime.** (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when ~~he~~ *the officer* pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If ~~his~~ *the judicial officer’s* conviction is reversed, suspension terminates and ~~he shall~~ *the officer must* be paid ~~his~~ *the officer’s* salary for the period of suspension.

(3) If ~~he~~ *the judicial officer* is suspended and ~~his~~ *a* conviction becomes final, the supreme court shall remove ~~him~~ *the officer* from office.”

**Section 156.** Section 3-1-1111, MCA, is amended to read:

**“3-1-1111. Orders for retirement or removal.** (1) Upon an order for retirement, the judicial officer ~~shall~~ *must* be retired with the same rights and privileges as if ~~he~~ *the officer* retired pursuant to statute.

(2) Upon an order for removal, the judicial officer ~~shall~~ *must* be removed from office and ~~his~~ *the officer’s* salary ~~shall~~ *must* cease from the date of the order. ~~He shall be~~ *The officer is* ineligible for any other judicial office and pending a further order of the court is suspended from practicing law.”

**Section 157.** Section 3-1-1122, MCA, is amended to read:

**“3-1-1122. Judge’s waiver of confidentiality — hearing made public.** In addition to the public disclosure required under 3-1-1107, 3-1-1121, and

3-1-1123 through 3-1-1126, the commission ~~must~~ *shall* allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives ~~his~~ *the* right of confidentiality and requests in writing that the proceedings be accessible to the public. Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section.”

**Section 158.** Section 3-1-1502, MCA, is amended to read:

**“3-1-1502. Training and certification of judges.** Except as provided in 3-1-1503, ~~no~~ *a* judge selected for a term of office may *not* assume the functions of ~~his~~ *the* office unless ~~he~~ *the judge* has filed with the county clerk and recorder in ~~his~~ *the* jurisdiction a certificate of completion of a course of education and training prescribed by the commission.”

**Section 159.** Section 3-1-1503, MCA, is amended to read:

**“3-1-1503. Exception — temporary certificate.** (1) Section 3-1-1502 does not apply to a judge who has received a temporary certificate issued by the commission as provided for in subsection (2).

(2) The commission may issue a temporary certificate enabling a judge to assume the functions of ~~his~~ *the* office pending completion of a course as required by 3-1-1502. The temporary certificate must be in a form and subject to the terms and conditions prescribed by the commission.

(3) The commission may issue a temporary certificate only if:

- (a) the judge is appointed or elected after the course is offered; or
- (b) the commission grants an excuse because of a personal illness, a death in the family, or other good cause.

(4) The appointing authority for an appointed judge shall notify the commission of the person appointed, and the person appointed must be certified as provided in 3-1-1502 or this section prior to assuming office.”

**Section 160.** Section 3-2-102, MCA, is amended to read:

**“3-2-102. Qualifications and residence.** (1) ~~No~~ *A* person is *not* eligible for the office of justice of the supreme court unless ~~he~~ *the person* is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office.”

**Section 161.** Section 3-2-212, MCA, is amended to read:

**“3-2-212. Powers of justices individually — certiorari and habeas corpus.** (1) Each of the justices of the supreme court ~~shall have power to~~ *may* issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody and may make ~~such~~ *the* writs returnable before ~~himself~~ *the issuing justice*, the supreme court, or ~~any justice thereof of the supreme court~~ or before any district court of the state or any *district court* judge ~~thereof~~. ~~Such~~ *The* writs may be heard and determined by the justice, court, or judge before whom they are made returnable.

(2) Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court.”

**Section 162.** Section 3-2-301, MCA, is amended to read:

**“3-2-301. Who shall preside.** The chief justice presides at all sessions of the supreme court, and in case of ~~his~~ *the chief justice’s* absence, the associate justice having the shortest term to serve presides ~~in his stead.~~”

**Section 163.** Section 3-2-401, MCA, is amended to read:

**“3-2-401. Election and term of office.** There must be a clerk of the supreme court who must be elected by the electors at large of the state and hold his office for the term of 6 years from the first Monday of January ~~next~~ *succeeding his following the clerk’s election.*”

**Section 164.** Section 3-2-406, MCA, is amended to read:

**“3-2-406. Deputy clerk.** The clerk of the supreme court shall appoint a deputy who, in the absence of the principal or in the case of vacancy in ~~his~~ *the* office, shall perform all the duties of office until ~~such~~ *the* disability ~~be is~~ removed or ~~the~~ vacancy ~~be is~~ filled. ~~Such~~ *The* deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of ~~his~~ *the* duties.”

**Section 165.** Section 3-2-502, MCA, is amended to read:

**“3-2-502. Duties of marshal.** (1) It ~~shall be~~ *is* the duty of the marshal to ~~attend upon~~ *be present and to assist* the supreme court and the justices ~~thereof~~ *of the supreme court* at each term of court. ~~He shall be~~ *The marshal is* the executive officer of the court and *shall act as crier thereof of the court.*

(2) ~~He must~~ *The marshal shall* serve within the state all returns and processes issuing from the supreme court and ~~shall have~~ *has* all the powers and *shall exercise* all the duties ~~that pertaining to~~ *sheriffs as have* to the district courts ~~so far as the same~~ *to the extent that the duties* are applicable.

(3) ~~He~~ *The marshal* shall act as a law clerk for the supreme court justices.”

**Section 166.** Section 3-5-115, MCA, is amended to read:

**“3-5-115. (Temporary) Agreement, petition, and appointment of judge pro tempore — waiver of jury trial.** (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. If the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, ~~he~~ *the district court judge* may appoint the judge pro tempore nominated by the parties to preside over the whole *action* or any aspect of the action as if the regular district court judge were presiding.

(2) An appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

**3-5-115. (Effective on occurrence of contingency) Agreement, petition, and appointment of judge pro tempore — waiver of jury trial.** (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. Except as provided in 3-20-102, if the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, the district court judge may appoint the judge pro tempore nominated by the parties to preside over the whole *action* or any aspect of the action as if the regular district court judge were presiding.

(2) Except as provided in 3-20-102, an appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

(3) The supreme court shall appoint the asbestos claims judge as provided in 3-20-102.”

**Section 167.** Section 3-5-201, MCA, is amended to read:

**“3-5-201. Election and oath of office.** (1) The judges of the district court, except judges pro tempore, must be elected by the qualified voters of the district.

(2) Except as provided in subsection (1), each judge of a district court ~~must~~ *shall*, as soon as ~~he~~ *the judge* has taken and subscribed ~~his~~ *the* official oath, file ~~the same official oath~~ in the office of the secretary of state.”

**Section 168.** Section 3-5-202, MCA, is amended to read:

**“3-5-202. Qualifications and residence.** (1) ~~No~~ A person is *not* eligible for the office of judge of a district court unless ~~he~~ *the person* is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of a district court need not be a resident of the district for which ~~he~~ *the judge* is elected or appointed at the time of ~~his~~ *the* election or appointment, but after ~~his~~ *the judge* election or appointment, ~~he~~ *the judge* must reside in the district for which ~~he~~ *the judge* is elected or appointed during ~~his~~ *the judge's* term of office.”

**Section 169.** Section 3-5-213, MCA, is amended to read:

**“3-5-213. Expenses when out of district.** A *district court* judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than ~~his~~ *the judge's* own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court ~~shall~~ *must* be paid ~~his~~ *the judge's* actual and necessary travel expenses, as ~~defined and provided in 2-18-501 through 2-18-503~~, while engaged in that service as follows:

(1) ~~his~~ *the judge's* travel expenses in going from the county seat *of the county in which he makes his place of residence* ~~the judge resides~~ to the place of trial, hearing, or conference and return; and

(2) ~~his~~ *the judge's* board and lodging while engaged in the trial, hearing, or conference.”

**Section 170.** Section 3-5-214, MCA, is amended to read:

**“3-5-214. Certification and filing of expense claim.** As soon as ~~his~~ *a district court judge's* services in connection with the trial, hearing, or conference referred to in 3-5-213 are concluded, the judge shall certify in detail ~~his~~ *the judge's* actual and necessary travel expenses as specified in 3-5-213; and shall file the claim with the state to be processed as provided by law.”

**Section 171.** Section 3-5-215, MCA, is amended to read:

**“3-5-215. Expenses when not in county of residence.** A *district court* judge of a judicial district composed of more than one county who, for the purpose of holding court and disposing of judicial business, goes to a county of ~~his~~ *that* judicial district other than the county in which ~~he~~ *the judge* resides and ~~therein~~ holds court or transacts judicial business ~~shall~~ *must* be paid ~~his~~ *the* actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred on account ~~thereof~~ *of the business* from the time ~~he~~ *the judge* leaves ~~his~~ *the judge's* place of residence until ~~he~~ *the judge* returns ~~thereto~~ *to the place of residence.*”

**Section 172.** Section 3-5-216, MCA, is amended to read:

**“3-5-216. Itemized statements — verification — filing.** (1) On the first of each month or within 3 days thereafter ~~after that date, such a~~ district court judge who ~~may desire to avail himself of the provisions of~~ *has a claim pursuant to 3-5-215 shall make out complete* an itemized claim against the state of Montana showing with dates and particulars ~~his~~ *the* actual and necessary travel expenses for the preceding month.

(2) ~~He~~ *The district court judge* shall verify ~~such the~~ claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures ~~therein~~ *enumerated in the claim* were made in the discharge of official business while away from home.

(3) ~~He~~ *The district court judge* shall ~~then~~ file ~~such the~~ claim with the state to be processed as provided by law.”

**Section 173.** Section 3-5-311, MCA, is amended to read:

**“3-5-311. Powers of judges at chambers.** (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in ~~his~~ *the judicial* district;

(b) grant all orders and writs ~~which that~~ are usually granted in the first instance upon an ex parte application and hear and dispose of ~~such those~~ orders and writs;

(c) hear and determine any matter necessary in the exercise of ~~his~~ *the judge's* powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment.

(2) When default judgments are entered in default cases, ~~as herein provided,~~ the judge shall forward to the clerk of the court of the county in which the action is pending the judgment ~~so made,~~ together with a minute *entry* of the proceedings. ~~had thereon, which shall be by said~~ *The clerk incorporated shall incorporate the judgment and minute entry* into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases.”

**Section 174.** Section 3-5-401, MCA, is amended to read:

**“3-5-401. Terms of court.** (1) The district court of each county ~~which that~~ is a *separate* judicial district ~~by itself has no~~ *does not have* terms and must always be open for the transaction of business; except on legal holidays and nonjudicial days.

(2) (a) In each district ~~where that is located in~~ two or more counties ~~are~~ *united,* the *district court judge thereof must shall* fix the term of court in each county in ~~his~~ *the* district and there must be at least four terms a year in each county. Any order of the judge of ~~such district~~ fixing terms of court ~~shall must~~ be filed in the office of the clerk of the district court in each county of ~~his~~ *the* district, and ~~shall remain the order remains~~ in effect until further order of the judge.

(b) ~~Nothing in this section shall~~ *This section may not* be construed to prevent the calling of a special term of court, with or without a jury, when in the opinion of the presiding judge the ~~same~~ *special term* is necessary.

(c) The district *court* judge may adjourn a term of district court in one county to a future day certain and in the meantime hold court in another county.”

**Section 175.** Section 3-5-405, MCA, is amended to read:

**“3-5-405. Change of place of holding court in emergency.** (1) The judge of the district court authorized to hold or preside at a court appointed to be held at a particular place may, by an order filed with the clerk *of the district court* and published as ~~he~~ *the judge* may prescribe, direct that the court be held or continued at any place in the county other than that appointed when war, insurrection, pestilence, or other public calamity, ~~or the danger thereof~~ *of such a calamity*, or the destruction or danger of the public building appointed for the holding the court may render it necessary.

(2) ~~He~~ *The district court judge* may, in the same manner, revoke the order and, ~~in his discretion,~~ *may* appoint another place in the same county for holding the court.”

**Section 176.** Section 3-5-503, MCA, is amended to read:

**“3-5-503. Duties concerning indexes.** ~~Said~~ *The clerk of the district court* shall cause to be made in each index correct entries, under the appropriate headings, of each ~~and every~~ action begun in the court of which ~~he~~ *the person* is clerk; ~~entering them~~ *The entries must be made* alphabetically by the name of the plaintiff in the General Index—Plaintiffs and alphabetically by the name of the defendants in the General Index—Defendants.”

**Section 177.** Section 3-5-504, MCA, is amended to read:

**“3-5-504. Register of actions.** The clerk ~~must~~ *of the district court shall* keep among the records of the court a register of actions. ~~He~~ *must* *The clerk shall* enter ~~therein~~ *in the register* the title of the action with brief notes under it, from time to time, of all papers filed and proceedings had ~~therein~~ *in the action*. The register must also state the names of the attorneys and all fees charged in each action.”

**Section 178.** Section 3-5-505, MCA, is amended to read:

**“3-5-505. Register of criminal actions.** The clerk of the district court shall keep a book called *the* “Register of Criminal Actions”, which must have a proper index and in which must be entered the title and number of the action with a memorandum of every paper filed and order or proceeding had ~~therein~~ *in the action*, along with the date ~~thereof~~ *of the filing, order, or proceeding*, and a memorandum of the name of every witness, the number of days ~~he~~ *that the witness* attended, and ~~his~~ *the person’s* witness fees.”

**Section 179.** Section 3-5-508, MCA, is amended to read:

**“3-5-508. Docket.** The docket is a book ~~which~~ *that* the clerk *of the district court* keeps in ~~his~~ *the clerk’s* office, with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; judgment, time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; *and* satisfaction of judgment, when entered. If a judgment ~~be~~ *is* for the recovery of money or damages, the amount must be stated in the docket under the head *heading* of judgment. If the judgment ~~be~~ *is* for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.”

**Section 180.** Section 3-5-509, MCA, is amended to read:

**“3-5-509. Docket to be available for inspection.** The docket kept by the clerk of *the district court* is open at all times during office hours for the inspection of the public, without charge. The clerk ~~must shall~~ arrange the several dockets kept by ~~him~~ *the clerk* in ~~such~~ a manner as to ~~facilitate that facilitates~~ their inspection.”

**Section 181.** Section 3-5-611, MCA, is amended to read:

**“3-5-611. Reporter pro tempore.** (1) The reporter of any district court ~~must attend shall perform~~ to the duties of ~~his~~ *the* office in person except when excused for good and sufficient reason by order of the court, ~~which~~ *The* order must be entered upon the minutes of the court. Employment in ~~his~~ *the reporter's* professional capacity elsewhere is not a good and sufficient reason for ~~such~~ *the* excuse.

(2) When the reporter of any court has been excused in the manner provided in this section, the court may appoint a reporter pro tempore, who ~~must shall~~ take the same oath and perform the same duties and receive the same compensation during the time of ~~his~~ employment as the regular reporter.”

**Section 182.** Section 3-6-101, MCA, is amended to read:

**“3-6-101. Establishment of court.** (1) A city with a population of 4,000 or more, according to the last federal census, may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court must be a court of record. The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.

(2) A city may have a municipal court only if the governing body of the city elects by a two-thirds majority vote to adopt the provisions of this chapter by ordinance and, in the ordinance, provides the manner in which and time when the municipal court is to be established and is to assume continuing jurisdiction over all pending city court cases. If a city judge is not an attorney and ~~his~~ *the* office is abolished because a municipal court is established, the ordinance must provide that the time when the establishment of the municipal court takes effect is the date on which the municipal court judge elected at the next election held under 3-6-201 begins ~~his~~ *the municipal court judge's* term of office. The ordinance must be consistent with the provisions of this chapter.”

**Section 183.** Section 3-6-203, MCA, is amended to read:

**“3-6-203. Salary.** The salary of the municipal court judge must be set by ordinance or resolution and is payable monthly by the city treasurer. Actual and necessary expenses for the municipal court judge are expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of ~~his~~ official duties.”

**Section 184.** Section 3-6-303, MCA, is amended to read:

**“3-6-303. Officers of the court.** (1) The chief of police of the city ~~shall be~~ is the executive officer of ~~such~~ *the municipal* court. ~~He~~ *The chief of police* shall serve all process and execute all orders of the court, either in person or by subordinate police officer, who shall execute process in ~~his~~ *the chief's* name.

(2) The chief of police, with the approval of the judge, shall appoint one or more ~~policemen~~ *police officers* as court officers, one of whom shall attend the sessions of the court and perform all duties in connection ~~therewith~~ *which with* the court that the judge may require.”

**Section 185.** Section 3-7-201, MCA, is amended to read:

**“3-7-201. Designation of water judge.** (1) A water judge shall *must* be designated ~~within 30 days after May 11, 1979,~~ for each water division by a majority vote of a committee composed of the district *court* judge from each ~~single judge~~ *single-judge* judicial district and the chief district judge from each ~~multiple judge~~ *multijudge* judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district *court* judge or retired district *court* judge of a judicial district wholly or partly within the water division.

(2) A district *court* judge or retired district *court* judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which ~~he~~ *the judge* is requested to sit.

(3) A water judge, when presiding over a water division, presides as district *court* judge in and for each judicial district wholly or partly within the water division.”

**Section 186.** Section 3-7-203, MCA, is amended to read:

**“3-7-203. Vacancies.** If a vacancy *in the office of water judge* occurs, it shall *must* be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits ~~his~~ *the* judicial position, is removed, or is otherwise unable to complete ~~his~~ *the* term as a water judge.”

**Section 187.** Section 3-7-224, MCA, is amended to read:

**“3-7-224. Jurisdiction of chief water judge.** (1) The chief 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 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 ~~his~~ *the chief water judge's* jurisdiction, the chief water judge has the same powers as a district *court* judge. ~~He~~ *The chief water judge* may issue ~~such~~ orders, on the motion of an interested party or on ~~his~~ *the judge's* own motion, ~~as~~ *that* may reasonably be required to allow ~~him~~ *the judge* to fulfill ~~his~~ *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 ~~deemed~~ *considered* necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).”

**Section 188.** Section 3-10-201, MCA, is amended to read:

**“3-10-201. Election.** (1) Each justice of the peace must be elected by the qualified electors of the county at the general state election ~~next~~ *immediately* preceding the expiration of the term of office of ~~his~~ *the justice of the peace's* predecessor.

(2) A justice of the peace shall *must* be nominated and elected on the nonpartisan judicial ballot in the same manner as ~~are~~ judges of the district court.

(3) Each judicial office shall *must* be a separate and independent office for election purposes, ~~and~~ each office shall *must* be numbered by the county commissioners, and each candidate for justice of the peace shall specify the



number of the office for which ~~he~~ *the candidate* seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for judicial officers, ~~shall also apply~~ *applies* to justices of the peace.”

**Section 189.** Section 3-10-202, MCA, is amended to read:

**“3-10-202. Oath — proof of certification.** (1) Each justice of the peace, elected or appointed, after ~~he has received his~~ *receipt of the* certificate of election or appointment, shall, before entering upon the duties of ~~his~~ office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice ~~must~~ *shall* satisfy the clerk that ~~he~~ *the justice* is certified as provided in 3-1-1502 or 3-1-1503.”

**Section 190.** Section 3-10-204, MCA, is amended to read:

**“3-10-204. Residence requirements.** (1) ~~Every~~ *A* justice of the peace must reside in the county in which ~~his~~ *the justice’s* court is held.

(2) ~~No~~ *A* person is *not* eligible ~~to~~ *for* the office of justice of the peace unless ~~he~~ *shall have been the person* is a citizen of the United States and *has been* a resident of the county in which ~~he~~ *the person* is to serve for 1 year ~~next~~ preceding ~~his~~ election or appointment.”

**Section 191.** Section 3-10-209, MCA, is amended to read:

**“3-10-209. Expenses.** All actual and necessary travel expenses, as ~~defined~~ and provided in 2-18-501 through 2-18-503, incurred by the justice of the peace in the performance of ~~his~~ official duties are a legal charge against the county.”

**Section 192.** Section 3-10-233, MCA, is amended to read:

**“3-10-233. Jurisdiction of acting justice.** When called in to preside over a justice’s court, the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom ~~he~~ *the person* holds court.”

**Section 193.** Section 3-10-234, MCA, is amended to read:

**“3-10-234. Expenses of acting justice.** Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person ~~shall~~ *must* be paid ~~his~~ actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503. If the acting justice is not a justice of the peace receiving a salary, ~~he~~ *shall* ~~the acting justice~~ *must* also receive ~~such~~ compensation *as that* is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held.”

**Section 194.** Section 3-10-401, MCA, is amended to read:

**“3-10-401. Contempts a for which justice of the peace may punish for.** A justice *of the peace* may punish for contempt persons guilty of *only* the following acts ~~and no other~~:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by ~~him~~ *the justice* tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the justice;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.”

**Section 195.** Section 3-10-405, MCA, is amended to read:

**“3-10-405. Conviction in docket.** The conviction, specifying particularly the offense and the judgment ~~thereon~~ *on the conviction*, must be entered by the justice *of the peace* in ~~his~~ *the* docket.”

**Section 196.** Section 3-10-502, MCA, is amended to read:

**“3-10-502. How entries made — prima facie evidence.** (1) The items listed in 3-10-501 must be entered in the docket under the title of the action to which they relate and, unless otherwise provided, at the time when they occur.

(2) ~~Such~~ *The* entries in a justice’s *justice of the peace’s* docket or a transcript ~~thereof of the entries~~ certified by the justice or ~~his~~ *the* justice’s successor in office are prima facie evidence of the facts ~~so~~ stated.”

**Section 197.** Section 3-10-514, MCA, is amended to read:

**“3-10-514. Docket of predecessor.** ~~Any~~ *A* justice *of the peace* with whom the docket of ~~his~~ *the* justice’s predecessor or of any other justice is deposited has and may exercise over all actions and proceedings entered in ~~such~~ *the* docket the same jurisdiction as if *the actions and proceedings were* originally commenced before ~~him~~ *the* justice. In the case of the creation of a new county or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as ~~such~~ *justice* within ~~the same~~ *that* territory ~~may come~~ is, for the purpose of this section, considered the successor of ~~such~~ *the* former justice.”

**Section 198.** Section 3-10-602, MCA, is amended to read:

**“3-10-602. Penalty.** ~~Any~~ *A* justice of the peace violating 3-10-601 ~~shall be deemed~~ *is* guilty of a misdemeanor, punishable by a fine not exceeding \$1,000 or imprisonment not exceeding 6 months in the county jail, or both. ~~He shall~~ *The violator is* also ~~be deemed~~ guilty of malfeasance in office and, in the discretion of the court, may be removed from office, ~~in which latter case he shall thereafter be~~ *A person removed from office is* disqualified from holding ~~such~~ *the* office *of justice of the peace.*”

**Section 199.** Section 3-10-706, MCA, is amended to read:

**“3-10-706. Execution of process by retiring constable.** A constable, notwithstanding the expiration of ~~his~~ *the* constable’s term of office, may proceed and complete the execution of all final process ~~which he~~ *that the* constable has begun to execute, in the same manner as if ~~he~~ *the* constable were still in office, and ~~his~~ *the* sureties ~~shall be~~ *are* liable to the same extent.”

**Section 200.** Section 3-10-1005, MCA, is amended to read:

**“3-10-1005. Docket entries.** The justice *of the peace* shall enter in the docket kept by ~~him~~ *the* justice for small claims cases the following:

- (1) the title of each action;
- (2) the amount claimed;

- (3) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;
- (4) the date the parties appeared or the date on which default was entered;
- (5) each adjournment, stating on whose application and to what time;
- (6) the judgment of the court;
- (7) a statement of any money paid to the justice, when, and by whom;
- (8) the date of the issuance of any abstract of the judgment; and
- (9) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.”

**Section 201.** Section 3-11-202, MCA, is amended to read:

**“3-11-202. Salary — qualifications.** (1) A city judge, at the time of election or appointment, ~~shall~~ *must*:

- (a) meet the qualifications of a justice of the peace under 3-10-202;
- (b) be a resident of the county in which the city or town is located; and
- (c) satisfy any additional qualifications prescribed by ordinance.

(2) The annual salary and compensation of city judges must be fixed by ordinance or resolution.

(3) Each city judge shall receive ~~his~~ actual and necessary travel expenses, as ~~defined and provided in 2-18-501 through 2-18-503~~, incurred in the performance of ~~his~~ official duties.”

**Section 202.** Section 3-11-203, MCA, is amended to read:

**“3-11-203. When substitute for judge called in.** (1) The city judge or mayor may call in a city judge, a justice of the peace, or some qualified person to act in the judge’s place whenever the judge is:

- (a) a party in a case;
- (b) interested in a case;
- (c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or
- (d) sick, absent, or unable to act.

(2) The city judge may call in a city judge, justice of the peace, or some qualified person to act in ~~his~~ *stead the city judge’s place* when a disqualifying affidavit is filed against ~~him~~ *the judge* pursuant to the supreme court’s rules on disqualification and substitution of judges.

(3) A city judge of any city or a justice of the peace of any county may sit as city judge at the city judge’s request.”

**Section 203.** Section 3-11-204, MCA, is amended to read:

**“3-11-204. Training sessions for judges.** (1) There ~~shall~~ *must* be two mandatory annual training sessions supervised by the supreme court for all elected and appointed city judges. One of the training sessions may be held in conjunction with the Montana magistrates’ association convention. Actual and necessary travel expenses, as ~~defined and provided in 2-18-501 through 2-18-503~~, and the costs of registration and books and other materials ~~shall~~ *must* be paid to the elected or appointed judge for attending the sessions. Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with

the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs ~~shall~~ *must* be paid by the city or town in which ~~he~~ *the judge* holds or will hold court and ~~shall~~ *must* be charged against that city or town.

(2) Each city judge shall attend the training sessions. Failure to attend disqualifies ~~him~~ *the judge* from office and creates a vacancy in the office. However, the supreme court may excuse a city judge from attendance because of illness, a death in the family, or any other good cause.”

**Section 204.** Section 3-11-205, MCA, is amended to read:

**“3-11-205. Justice of the peace or judge of another city as city judge.**

(1) In a town or third-class city, the council may designate a justice of the peace or the city judge of another city or town to act as city judge. The justice of the peace or city judge ~~shall~~ *must* reside in the county in which the town or city is situated. The city or town may by ordinance fix the funding for ~~such~~ *the judge* and enter into an agreement with the county, the other city or town, or the justice of the peace or the judge for payment of salaries and training expenses. The justice of the peace or other city judge shall, after agreeing to the designation and after approval by the board of county commissioners or governing body of the city or town, act in that capacity and ~~shall be~~ *is* the city judge in all cases arising out of violations of statutes or ordinances. If the justice of the peace or city judge of another city or town ~~must is required to~~ travel from ~~his~~ *the justice’s or judge’s* place of residence to hold court, ~~he~~ *shall* ~~the justice or judge~~ *must* be paid ~~his~~ *the* actual and necessary travel expenses, as ~~defined and~~ provided in 2-18-501 through 2-18-503, by the town or city in which the court is held.

(2) The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101.”

**Section 205.** Section 3-12-203, MCA, is amended to read:

**“3-12-203. Judge in multicounty district.** (1) ~~Where~~ *When* there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district *court* judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district.

(2) In ~~such~~ *the* cases described in subsection (1), the salary of the small claims court judge ~~shall~~ *must* be prorated among the counties in which ~~he~~ *the judge* presides.

(3) The judge ~~shall be~~ *is* entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to 2-18-503.”

**Section 206.** Section 3-15-201, MCA, is amended to read:

**“3-15-201. Fees in courts of record.** (1) A grand or trial jury panel member ~~shall~~ *must* receive \$12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between ~~his~~ *the member’s* residence and the county seat. Those jurors selected from the panel for a case ~~shall~~ *must* receive an additional \$13 a day while serving.

(2) A juror who is excused from attendance upon ~~his~~ *the juror’s* own motion on the first day of ~~his~~ appearance in obedience to a notice or who has been

summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.”

**Section 207.** Section 3-15-203, MCA, is amended to read:

**“3-15-203. Fees in courts not of record and coroner inquests.** (1) A jury panel member in civil actions, criminal actions, and coroner inquests is entitled to a fee of \$12 per day for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between ~~his~~ *the member’s* residence and the court. A jury panel member selected for a case is entitled to an additional \$13 per day while serving.

(2) In civil actions, the jurors’ fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(3) A juror who is excused from attendance upon ~~his~~ *the juror’s* own motion on the first day of ~~his~~ appearance in obedience to a notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.”

**Section 208.** Section 3-15-401, MCA, is amended to read:

**“3-15-401. Jury lists — by whom and when made.** The ~~chairman~~ *presiding officer* or, in ~~his~~ *the presiding officer’s* absence, any member of the board of county commissioners and the county clerk and recorder of each county ~~must~~ *shall* meet at the county seat of each county at the office of the county clerk and recorder on the second Monday of June of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they ~~must~~ *shall* meet as soon thereafter as practicable.”

**Section 209.** Section 3-15-504, MCA, is amended to read:

**“3-15-504. Drawing by two or more judges in same district.** In districts where there are two or more judges, each judge may order jurors drawn and summoned to attend the session or term over which ~~he~~ *that judge* presides, as provided in this part.”

**Section 210.** Section 3-15-601, MCA, is amended to read:

**“3-15-601. When and how drawn and summoned.** (1) Whenever in the opinion of the district *court* judge a grand jury is necessary, ~~he~~ *the judge* ~~must~~ *shall* make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which may not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box or the computer database provided for in 3-15-404. If jurors are selected from the computer database, it must be through a computerized random selection process that the judges of the district court of the county have approved in writing as the requirements for the drawing of grand juries. A copy of the latest jury list and a description of the approved computer process employed in the selection must be kept in the office of the clerk of court and *must* be available for public inspection during normal business hours.

(3) The list of names ~~shall~~ *must* be certified and the jurors summoned ~~in~~ the same manner as for trial jurors. The names or numbers of any persons drawn who are not impaneled on the grand jury must be returned to the jury box or reinstated on the computer database.”

**Section 211.** Section 3-15-602, MCA, is amended to read:

**“3-15-602. Who constitutes jury.** (1) When 11 of the persons summoned as grand jurors who are competent and not excused are present, they constitute the grand jury.

(2) When more than 11 are present, the jury commissioner shall write their names on separate ballots and place the ballots in black capsules. The capsules ~~shall~~ *must* be deposited in a box large enough to hold all of the capsules without crowding. The box ~~shall~~ *must* be so arranged so that the jury commissioner drawing the capsules from the box is unable to see the capsule ~~he~~ *that the commissioner* is about to draw. The jury commissioner shall draw 11 capsules. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court shall order a sufficient number to be immediately drawn as provided in 3-15-601(2) and summoned to attend the court.”

**Section 212.** Section 3-15-604, MCA, is amended to read:

**“3-15-604. Drawing and summoning in multijudge districts.** In districts where there are two or more judges, each judge may order a grand jury to be drawn and summoned to attend the session or term over which ~~he~~ *that judge* presides, as provided in this part, but ~~no~~ more than one grand jury ~~must~~ *ever may not* be in attendance upon any district court at the same time.”

**Section 213.** Section 3-15-701, MCA, is amended to read:

**“3-15-701. When and by whom jurors summoned.** When jurors are required in any court of limited jurisdiction, they:

(1) must, upon the order of the judge ~~thereof~~, be summoned by ~~the~~ *a* sheriff, constable, marshal, or ~~police~~ *police officer* of the jurisdiction; or

(2) may be summoned by the judge of the court of limited jurisdiction or by the clerk of that court.”

**Section 214.** Section 3-15-801, MCA, is amended to read:

**“3-15-801. Summoning the juries.** Juries of inquest ~~shall~~ *must* be summoned by the officer before whom the proceedings in which they are to sit are to be ~~had~~ *held* or by ~~any~~ *a* sheriff, constable, or ~~police~~ *police officer* from the ~~persons~~ *residents of the county who are* competent to serve as jurors; ~~residents of the county~~, by notifying them orally that they are ~~so~~ summoned and of the time and place at which their attendance is required.”

**Section 215.** Section 5-1-105, MCA, is amended to read:

**“5-1-105. Restriction on commissioners seeking election to legislature.** A member of the commission may not run for election to a legislative seat within 2 years after the districting and apportionment plan in which ~~he~~ *the commissioner* participated becomes effective.”

**Section 216.** Section 5-2-102, MCA, is amended to read:

**“5-2-102. Term of office.** The term of office of a senator is 4 years or until ~~his~~ *a* successor is elected and qualified, and ~~the~~ *term of office* of a representative is 2 years or until ~~his~~ *a* successor is elected and qualified. The term of service ~~shall begin~~ *begins* on the first Monday of January ~~next succeeding his~~ *following the* election. If a senator is elected to fill a vacancy, ~~his~~ *the* term of service ~~shall begin~~ *begins* on the ~~next~~ day after ~~his~~ *the* election.”

**Section 217.** Section 5-2-104, MCA, is amended to read:

**“5-2-104. Appointment to or candidacy for other offices.** (1) ~~No~~ A member of the legislature may *not*, during the term for which ~~he~~ *the member* was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during ~~his~~ *the legislator's* term.

(2) A member of the legislature who is elected to ~~other~~ *another* public office shall resign from the legislature prior to assuming the office to which ~~he was~~ *the member is* newly elected.”

**Section 218.** Section 5-2-105, MCA, is amended to read:

**“5-2-105. Facsimile signatures authorized.** (1) As used in this section, “facsimile signature” means a reproduction of the manual signature of a legislator by engraving, imprinting, stamping, facsimile transmission, or other means.

(2) On state documents requiring a signature, a legislator may use a facsimile signature in lieu of ~~his~~ *a* manual signature. Before using a facsimile signature, the legislator shall file a copy of ~~his~~ *the legislator's* manual or facsimile signature, certified by ~~him~~ *the legislator* under oath, with the presiding officer of the house of which ~~he~~ *the legislator* is a member.”

**Section 219.** Section 5-2-211, MCA, is amended to read:

**“5-2-211. Certified rosters.** The secretary of state shall prepare certified rosters from the official election records on file in ~~his~~ *the secretary of state's* office for use in the organization of the senate and house of representatives.”

**Section 220.** Section 5-2-213, MCA, is amended to read:

**“5-2-213. Organization of house of representatives.** At the time specified in 5-2-212, the secretary of state, or, in case of ~~his~~ *the secretary of state's* absence or inability, ~~then~~ the senior member-elect present, ~~must~~ *shall* take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts. After the ~~same~~ *names* are called, the members-elect ~~must~~ *shall* take the constitutional oath of office and assume their seats. The house of representatives may ~~thereupon~~ *at that time*, if a quorum is present, proceed to elect its officers.”

**Section 221.** Section 5-2-216, MCA, is amended to read:

**“5-2-216. Tie vote.** ~~In the event~~ *If* there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of ~~his~~ *that candidate's* party as the governor of Montana ~~shall be deemed to be~~ *is* elected.”

**Section 222.** Section 5-2-302, MCA, is amended to read:

**“5-2-302. Compensation and expenses when legislature not in session.** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

- (1) a mileage allowance as provided in 2-18-503;
- (2) expenses as provided in 2-18-501 and 2-18-502; and
- (3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301(1), for each 24-hour period of time (from midnight to midnight), or portion ~~thereof~~ *of that time*, spent away from home on

authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, ~~he~~ *the legislator* may not be compensated for the additional day."

**Section 223.** Section 5-2-405, MCA, is amended to read:

**"5-2-405. Term of appointee.** (1) Whenever ~~the~~ *a* vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which ~~his~~ *the* predecessor was elected.

(2) Whenever ~~the~~ *a* vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in 5-2-406."

**Section 224.** Section 5-4-204, MCA, is amended to read:

**"5-4-204. Submission of fiscal note — sponsor's fiscal note — distribution to legislators.** (1) A completed fiscal note ~~shall~~ *must* be submitted by the budget director to the presiding officer who requested it. Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor ~~must~~ *shall*:

(a) notify the presiding officer that ~~he~~ *the sponsor* concurs with the completed fiscal note;

(b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note, the presiding officer shall refer the completed fiscal note prepared by the budget director to the committee considering the bill. If the bill is printed, the note ~~shall~~ *must* be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the budget director shall submit a revised completed fiscal note to the presiding officer;

(ii) the sponsor shall notify the presiding officer that ~~he~~ *the sponsor* concurs with the original completed fiscal note; or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note ~~shall~~ *must* be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note, ~~he~~ *the sponsor* shall prepare the fiscal note, as provided in 5-4-205, and return the completed sponsor's fiscal note to the presiding officer within 4 days of ~~his~~ *the* election to prepare a sponsor's fiscal note.



(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note.

(c) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks."

**Section 225.** Section 5-4-302, MCA, is amended to read:

**"5-4-302. Approval of bills.** When the governor approves a bill, ~~he must set his name thereto~~ *the governor shall sign the bill* with the date of his approval and deposit the ~~same bill~~ *bill* in the office of the secretary of state."

**Section 226.** Section 5-4-303, MCA, is amended to read:

**"5-4-303. Line item veto.** If ~~any~~ *a* bill presented to the governor contains several distinct items of appropriation of money, ~~he~~ *the governor* may disapprove one or more items while approving other portions of the bill. ~~In such case he~~ *If an item is disapproved, the governor* shall append to the bill, at the time of signing it, a statement of the items *objected to* ~~which he objects~~ and his ~~objections thereto~~ *the reasons for the objection*. The governor ~~must~~ *shall* transmit to the house in which the bill originated, (or to the secretary of state if the legislature is not in session), a copy of ~~such~~ *the* statement, and the items ~~so~~ *objected to* must be separately reconsidered in the same manner as bills ~~which~~ *that* have been disapproved by the governor."

**Section 227.** Section 5-4-304, MCA, is amended to read:

**"5-4-304. Amendatory veto.** The governor may return any bill to the originating house with ~~his~~ *the governor's* recommendations for amendment. ~~Such~~ *The originating* house shall reconsider the bill under its rules relating to an amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) 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.

(2) If both houses approve the governor's recommendations, the bill ~~shall~~ *must* be returned to the governor for ~~his~~ *his* reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill ~~shall~~ *must* be returned to the governor for ~~his~~ *his* reconsideration.

(4) 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:

(a) If both houses adopt a conference committee report, the bill, in accordance with the report, ~~shall~~ *must* be returned to the governor for ~~his~~ *his* reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations ~~shall be~~ *are* considered not approved and the bill ~~shall~~ *must* be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time."

**Section 228.** Section 5-4-305, MCA, is amended to read:

**“5-4-305. Bills returned without approval.** (1) A bill or item or items of an appropriations bill become law whenever:

- (a) the bill passes both houses of the legislature;
- (b) the bill is returned by the governor without ~~his~~ signature and with objections ~~thereto to the bill~~ or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and
- (c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items ~~shall~~ *must* be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate ~~shall~~ *must* be: “This bill having been returned by the governor with ~~his~~ objections ~~thereto~~ and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ...., A.D. ....” or “The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this .... day of ...., A.D. ....”. The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement ~~shall~~ *must* be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state.”

**Section 229.** Section 5-4-306, MCA, is amended to read:

**“5-4-306. Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without ~~his~~ approval and with ~~his~~ objections to the bill to the house in which it originated, that house has adjourned for the day, (but not for the session), ~~he~~ *the governor* may deliver the bill with ~~his~~ *the* message to the presiding officer, secretary, clerk, or any member of ~~such~~ *that* house. The delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of the delivery and of the time when and the person to whom the delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, ~~he~~ *the governor* shall return the bill with ~~his~~ *the* reasons for the veto to the secretary of state. If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall within 5 working days of receipt of the bill and veto message mail a copy of the title of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall poll the members of the legislature. The secretary of state shall within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator, a copy of the bill and the veto message, instructions for casting a vote, and notice of the date by which each legislator shall return ~~his~~ *a* vote. The date for return must be within 30 days after the date on which the bill, veto message, and voting instructions are sent. A legislator may cast and return a vote by delivering it in person, mailing it, or sending a facsimile transmission of it to the office of the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill ~~shall become~~ *becomes* law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session.”

**Section 230.** Section 5-5-101, MCA, is amended to read:

**“5-5-101. Subpoenas.** (1) A subpoena requiring the attendance of any witness before either house of the legislature or a committee ~~thereof of either house~~ may be issued by the president of the senate, *the* speaker of the house, or the ~~chairman~~ *presiding officer* of any committee before whom the attendance of the witness is desired.

(2) ~~It~~ *A subpoena* is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it is addressed to the witness;

(c) it requires the attendance of ~~such~~ *the* witness at a time and place certain;

(d) it is signed by the president of the senate, speaker of the house, or ~~chairman~~ *presiding officer* of a committee.”

**Section 231.** Section 5-5-102, MCA, is amended to read:

**“5-5-102. Service of subpoenas.** The subpoena may be served by any elector of the state, and ~~his~~ *the elector’s* affidavit that ~~he~~ *the elector* delivered a copy to the witness is evidence of service.”

**Section 232.** Section 5-5-103, MCA, is amended to read:

**“5-5-103. Contempt.** If ~~any~~ *a* witness neglects or refuses to obey ~~such~~ *a* subpoena or, appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit ~~him~~ *the witness* for contempt.”

**Section 233.** Section 5-5-105, MCA, is amended to read:

**“5-5-105. Immunity of witness.** (1) ~~No~~ *A* person sworn and examined before either house of the legislature or any committee ~~thereof can~~ *of the legislature may not* be held to answer criminally or be subject to any penalty or forfeiture for any fact or act ~~touching which he is required to testify relating to the required testimony.~~ *No* *A* statement made or paper produced by ~~any such~~ *the* witness is *not* competent evidence in any criminal proceeding against ~~such~~ *the* witness.

(2) ~~Such~~ *A* witness cannot refuse to testify to any fact or to produce any paper ~~touching~~ *concerning* which ~~he~~ *the witness* is examined for the reason that ~~his~~ *the witness’s* testimony or the production of ~~such~~ *the* paper tends to disgrace ~~him~~ *the witness* or render ~~him~~ *the witness* infamous.

(3) ~~Nothing in this~~ *This* section ~~exempts~~ *does not exempt* ~~any a~~ *a* witness from prosecution and punishment for perjury committed by ~~him~~ *on such* ~~the~~ *witness* during the examination.”

**Section 234.** Section 5-5-301, MCA, is amended to read:

**“5-5-301. Governor to transmit list of appointments to legislature.** Within 10 days after the ~~meeting~~ *convening* of the legislature, the governor ~~must~~ *shall* transmit to ~~it~~ *the legislature* a list of all appointments made by ~~him~~, *the governor* under the provisions of 2-16-506; during the recess of the legislature.”

**Section 235.** Section 5-5-302, MCA, is amended to read:

**“5-5-302. Nominations to senate to be in writing.** Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which ~~he~~ *the person* is nominated.”

**Section 236.** Section 5-5-413, MCA, is amended to read:

**“5-5-413. Suspension pending trial — filling vacancy.** (1) Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, ~~such~~ *the* officer is temporarily suspended from ~~his~~ office and cannot act in ~~his~~ *an* official capacity until ~~he~~ *the officer* is acquitted.

(2) Upon ~~such~~ suspension of any officer other than the governor, ~~his~~ *the* office must be at once temporarily filled by an appointment made by the governor, with the advice and consent of the senate. The term of the appointment is until the acquittal of the party impeached or, in case of ~~his~~ *the party's* removal, until the vacancy is filled at the next election as required by law.”

**Section 237.** Section 5-5-415, MCA, is amended to read:

**“5-5-415. Service — how made.** The service must be made upon the defendant personally, or, if ~~he~~ *the defendant* cannot upon diligent inquiry be found within the state, the senate, upon proof of that fact, may order publication to be made, in ~~such~~ *the* manner ~~as that it may deem~~ *considers* proper, of a notice requiring ~~him~~ *the defendant* to appear at a specified time and place and answer the articles of impeachment.”

**Section 238.** Section 5-5-418, MCA, is amended to read:

**“5-5-418. Counsel may be appointed.** (1) If the defendant appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate to appoint some suitable person to assist ~~him~~ *the defendant* in ~~his~~ a defense.

(2) If the defendant is served by publication and fails to appear, it is the duty of the president of the senate to appoint some person or counsel to appear in ~~his~~ behalf of *the defendant* and to make a defense for ~~him~~.”

**Section 239.** Section 5-5-419, MCA, is amended to read:

**“5-5-419. Defendant's objection or answer.** When the defendant appears, ~~he~~ *the defendant* may *object*, in writing, ~~object~~ to the sufficiency of the articles of impeachment or ~~he~~ may answer the ~~same~~ *articles* by an oral plea of not guilty. The plea must be entered upon the journal and must put in issue every material allegation of the articles of impeachment.”

**Section 240.** Section 5-5-420, MCA, is amended to read:

**“5-5-420. Overrule of objection — defendant's plea.** If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate, the defendant must be ordered ~~forthwith~~ to *immediately* answer the articles of impeachment. If ~~he~~ *then the defendant* pleads guilty, the senate ~~must~~ *shall* render judgment of conviction against ~~him~~ *the defendant*. If ~~he~~ *the defendant* pleads not guilty or refuses to plead, the senate ~~must~~ *shall*, at ~~such~~ *the* time ~~as that it may appoint~~ *designates*, proceed to try the impeachment.”

**Section 241.** Section 5-5-421, MCA, is amended to read:

**“5-5-421. Two-thirds vote necessary to a conviction.** The defendant cannot be convicted on impeachment without the concurrence of two-thirds of

the members elected, voting by ayes and noes. If two-thirds of the members elected do not concur in a conviction, ~~he~~ *the defendant* must be acquitted.”

**Section 242.** Section 5-5-431, MCA, is amended to read:

**“5-5-431. Nature of the judgment.** The judgment *in the impeachment* may be that the defendant be suspended or that ~~he~~ *the defendant* be removed from office and disqualified to hold any office of honor, trust, or profit under the state.”

**Section 243.** Section 5-6-109, MCA, is amended to read:

**“5-6-109. Interns responsible to sponsor.** Each legislative intern is directly responsible to ~~his or her~~ *the intern's* legislator.”

**Section 244.** Section 5-7-101, MCA, is amended to read:

**“5-7-101. Purposes of chapter — applicability.** (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, financial, and occupational interests, and to require disclosure of the amounts of money spent for lobbying.

(2) ~~Nothing in this~~ *This chapter subjects does not subject* an individual lobbying on ~~his~~ *the individual's* own behalf to any reporting requirements ~~nor deprives or deprive~~ an individual of the constitutional right to communicate with public officials.”

**Section 245.** Section 5-7-201, MCA, is amended to read:

**“5-7-201. Docket — contents.** The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of ~~his~~ *the lobbyist's* principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal must also indicate the date of receipt of the principal's lobbying reports as required by 5-7-208.”

**Section 246.** Section 5-7-203, MCA, is amended to read:

**“5-7-203. Principal — name of lobbyist on docket.** ~~Every~~ *Each* principal who employs ~~any~~ *a* lobbyist shall within 1 week after ~~such~~ *the* employment cause the name of ~~said~~ *the* lobbyist to be entered upon the docket. It ~~shall~~ *is* also be the duty of the lobbyist to enter ~~his~~ *the lobbyist's* name upon the docket. Upon the termination of ~~such~~ employment, ~~such~~ *that* fact may be entered opposite the name of the lobbyist either by the lobbyist or *by* the principal.”

**Section 247.** Section 5-7-210, MCA, is amended to read:

**“5-7-210. Reimbursement.** Whenever a lobbyist invites a public official to attend a function ~~which~~ *that* the lobbyist or ~~his~~ *the lobbyist's* principal has fully or partially funded or sponsored; or whenever a lobbyist offers a public official a gift, the lobbyist ~~must~~ *shall*, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse. ~~Such~~ *The* expenditures must be itemized in the principal's reports with a notation “reimbursed by benefactee”.”

**Section 248.** Section 5-7-301, MCA, is amended to read:

**“5-7-301. Prohibition of practice without license and registration.**

(1) ~~No~~ An individual may *not* practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters ~~he~~ *that the individual* is promoting or opposing.

(2) ~~No~~ A principal may *not* directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is ~~duly~~ licensed and the names of the lobbyist and the principal are ~~duly~~ entered on the docket.”

**Section 249.** Section 5-11-104, MCA, is amended to read:

**“5-11-104. Officers — rules of procedure — records.** The legislative council shall organize immediately following appointment by electing one of its members as its ~~chairman~~ *presiding officer* and by electing ~~such~~ other officers from among its membership ~~as that the council may deem desirable~~ *considers appropriate*. The council ~~is empowered to~~ *may* adopt rules of procedure, ~~and to~~ make all arrangements for its meetings, and ~~to~~ carry out the purpose for which it is created. The council ~~is directed to~~ *shall* keep accurate records of its activities and proceedings.”

**Section 250.** Section 5-11-204, MCA, is amended to read:

**“5-11-204. Secretary of state to assign chapter numbers to new laws.** ~~It shall be the duty of the~~ *The* secretary of state *shall*, when bills passed by any legislature of Montana are filed in ~~his~~ *the secretary's* office as directed in 5-4-302 and 5-4-305, ~~to note thereon on the bill~~ the date of filing and ~~to~~ number ~~such~~ *the* bills, except resolutions, in the order of their reception ~~by him~~, chapter 1 and upwards, using Arabic numerals.”

**Section 251.** Section 5-12-202, MCA, is amended to read:

**“5-12-202. Appointment of members.** (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the ~~chairman~~ *presiding officer*;

(b) two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the ~~chairman~~ *presiding officer*; and

(d) two members of the house appointed at large by the speaker.

(2) These members ~~shall~~ *must* be appointed before the end of each legislative session. No more than three members of each house, two committee members and one at-large member, may be from the same political party.”

**Section 252.** Section 5-12-203, MCA, is amended to read:

**“5-12-203. Term — officers — compensation.** (1) Appointments are for 2 years, and a member of the committee shall serve until ~~his~~ *the member's* term of office as a legislator ends or until ~~his~~ *a* successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as that~~ it considers necessary.

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302.”

**Section 253.** Section 5-13-303, MCA, is amended to read:

**“5-13-303. Term and removal.** The legislative auditor is responsible solely to the legislature. ~~He~~ *The legislative auditor* shall hold office for a term of 2 years beginning with July 1 of each even-numbered year. The committee may remove ~~him~~ *the legislative auditor* for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.”

**Section 254.** Section 5-13-306, MCA, is amended to read:

**“5-13-306. Legislative auditor to assist legislature during sessions.** During sessions of the legislature, the legislative auditor and ~~his~~ *the audit* staff, when requested, shall assist the legislature, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.”

**Section 255.** Section 5-13-307, MCA, is amended to read:

**“5-13-307. Recommendations of legislative auditor — implementation costs.** (1) The reports of the legislative auditor may include comments, recommendations, and suggestions, but ~~he shall have no~~ *the legislative auditor does not have* the power to enforce them ~~nor shall he~~ and may not otherwise influence or direct executive or legislative action.

(2) Whenever significant costs are associated with the implementation of audit recommendations, the legislative auditor shall, if practicable, note this fact and the estimated amount of ~~such~~ *the* costs in the appropriate audit report.”

**Section 256.** Section 5-13-309, MCA, is amended to read:

**“5-13-309. Information from state agencies.** (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This ~~shall~~ *section may not* be construed as authorizing the publication of information ~~which~~ *the prohibited* by law ~~prohibits publishing~~.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state ~~moneys~~ *money* or property under ~~his~~ *that* agency’s control or for which ~~he~~ *that* agency is responsible.”

**Section 257.** Section 5-13-402, MCA, is amended to read:

**“5-13-402. Audit costs.** (1) Prior to July 1 of each even-numbered year, the legislative auditor shall advise each agency and the budget director of the estimated audit costs for the following biennium. Each agency shall include the estimated audit costs in its proposed budget submitted to the budget director pursuant to 17-7-112. The budget director shall notify the legislative auditor if the executive budget recommendation to the legislature for audit costs differs from that proposed by the legislative auditor.

(2) Not later than 60 days after adjournment of each legislature, the budget director shall provide to the legislative auditor a schedule reflecting, by fund, amounts appropriated to each agency for audit costs.

(3) The legislative auditor shall bill agencies for audit services ~~as he~~ *that the legislative auditor* considers necessary. ~~In no event may the~~ *The* legislative auditor ~~may not~~ bill an agency for audit services in excess of amounts appropriated for audit services. Additional ~~audit-related~~ *audit-related* services

may be provided by the legislative auditor at a cost agreed to by an agency and billed to the agency.”

**Section 258.** Section 5-15-102, MCA, is amended to read:

**“5-15-102. Ineligibility for appointment.** ~~Any~~ A person who is an employee, agent, officer, partner, or director of ~~any a~~ regulated company or who has served a regulated company in any capacity within the 3 years previous to ~~his~~ *the person’s* appointment may not be a member of the committee.”

**Section 259.** Section 5-15-103, MCA, is amended to read:

**“5-15-103. Term of office.** A member shall serve until ~~his~~ *the member’s* term of office as a legislator ends and until ~~his a~~ successor is appointed.”

**Section 260.** Section 5-15-105, MCA, is amended to read:

**“5-15-105. Officers.** The committee shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as that~~ it determines necessary.”

**Section 261.** Section 5-15-201, MCA, is amended to read:

**“5-15-201. Consumer counsel — appointment and qualifications.** The committee shall appoint a consumer counsel and set ~~his~~ *the consumer counsel’s* salary. The consumer counsel ~~shall~~ *must* have the following minimum qualifications and ~~such~~ additional qualifications ~~as that~~ the committee determines appropriate:

(1) a bachelor’s degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.”

**Section 262.** Section 5-16-105, MCA, is amended to read:

**“5-16-105. Officers.** The council shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as that~~ it ~~deems~~ *determines* necessary. ~~Such~~ An officer ~~shall be~~ *is* elected for a term of 2 years.”

**Section 263.** Section 7-1-4121, MCA, is amended to read:

**“7-1-4121. General definitions.** As used in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) “Charter” means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations on the government.

(2) “Chief executive” means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the ~~chairman~~ *presiding officer* in a government adopting the ~~commission-chairman~~ *commission-presiding officer* form, the town ~~chairman~~ *presiding officer* in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

(3) “Elector” means a resident of the municipality qualified and registered to vote under state law.

(4) “Employee” means a person other than an officer who is employed by a municipality.



(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity that incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out the duties of the records administrator.

(11) "Officer" means a person holding a position with a municipality ~~which~~ *that* is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision.

(19) "Public property" means any property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."

**Section 264.** Section 7-2-101, MCA, is amended to read:

**"7-2-101. Transcript of records upon alteration of boundary of local government.** When ~~any~~ a territory ~~shall be~~ *is* detached from any county, city, or town in this state and annexed to any other county, city, or town:

(1) ~~it shall be~~ *is* the duty of the proper officer of ~~such~~ *the* county, city, or town to which ~~said~~ *the* territory ~~shall be~~ *is* annexed to demand from the proper officer of the county, city, or town having custody of the public records of the territory a transcript of all public records pertaining to ~~such~~ *the* territory; and

(2) ~~it shall be~~ *is* the duty of ~~such~~ *the* officer from whom ~~they shall be~~ *the records are* demanded to furnish ~~such~~ *the* authenticated transcripts of all ~~such~~ records in ~~his~~ *that* office, which ~~shall~~ *must* be paid for, after ~~they shall be~~ *so the records are* furnished, by the county, city, or town to which ~~said~~ *the* territory ~~shall be~~ *is* annexed."

**Section 265.** Section 7-2-2206, MCA, is amended to read:

**"7-2-2206. Contents of petition — petition approval procedure — deadline for filing signatures.** (1) ~~Such~~ A petition or petitions ~~for creation of a new county~~ must contain:

(a) a legal description of the territory proposed to be taken from the county in which the petition is circulated;

(b) a general map, on a separate page or pages, ~~which~~ *that* with shaded areas or darkened boundary lines will display to prospective petition signers the general outlines of the territory described in subsection (1)(a);

(c) a statement of the assessed valuation of ~~such~~ *the* proposed county as shown by the ~~last preceding~~ *most recent* assessment, inclusive of all assessed valuation;

(d) a statement of the surveyed area, in square miles, ~~which~~ *that* will remain in the county or counties from which territory is taken to form ~~such~~ *the* new county after ~~such~~ *the* county is formed; a statement of the surveyed area in square miles, ~~which~~ *that* will be in the new county after formation; and a statement that the surveyed area of the territory proposed to be transferred is greater than 49 square miles;

(e) a warning that a person is subject to a \$500 fine or 6 months in jail, or both, if ~~he~~ *the person* purposefully:

(i) signs a name other than ~~his~~ *the person's* own to the petition;

(ii) signs more than once for the same issue; or

(iii) signs when not a legally registered voter residing in the territory to be added to the proposed new county;

(f) if the proposed new county is to be formed from one existing county, or from portions of two or more existing counties, the name of the proposed new

county and a ~~prayer request~~ that ~~such the~~ proposed new county be organized into a new county under the provisions of this part; and

(g) if the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a ~~prayer request~~ that this territory be added to the proposed new county under the provisions of this part.

(2) Each person ~~must shall~~ sign ~~his the person's~~ name and address in substantially the same manner as on ~~his the person's~~ voter registry card; or the signature will not be counted.

(3) Numbered lines must be provided for signatures. Each numbered line must contain spaces for the signature, the printed last name of the signer, and the signer's address.

(4) The signatures ~~need are not required to~~ all be appended to one paper but may be signed to several petitions, which must be similar in form. When ~~so~~ signed, the several petitions may be fastened together and ~~shall must~~ be treated and presented as one petition.

(5) Before a petition may be circulated for signatures, a sample petition must be submitted to the county election administrator in the form in which it will be circulated for approval as to form. 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 this part. 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 boundaries. If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 21 days after submission of the sample send written notice to the person who submitted the petition. ~~Thereafter~~ *After that notice*, the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(6) All petition signatures must be collected and filed within 120 days of the date of the notice that the petition has been approved as to form."

**Section 266.** Section 7-2-2207, MCA, is amended to read:

**"7-2-2207. Affidavits to be attached to petition — verification of signatures.** (1) There ~~shall must~~ be attached and filed with each sheet or section of the petition or petitions an affidavit of the person who circulated the petition, stating that it is ~~his the person's~~ belief that:

(a) it is signed by at least 50% of the qualified electors, as ~~herein~~ provided in *this part*, of the proposed new county or of the proposed portion ~~thereof of a proposed county~~ taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(b) the signatures ~~affixed thereto~~ are genuine; and

(c) each of ~~such persons so~~ *person* signing was, at the date of ~~such~~ signing, a qualified elector of the proposed new county or of the portion ~~thereof of the proposed county~~ taken from an existing county.

(2) The clerk of the county receiving the petition shall check the names of all signers to verify that they are registered electors of the proposed territory to be taken from the county. In addition, the county clerk shall randomly select signatures on each sheet or section of the petition and compare them with the signatures of the electors as they appear on the registration records of the office.

If all of the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the registration records of the office.”

**Section 267.** Section 7-2-2223, MCA, is amended to read:

**“7-2-2223. Procedure to complete creation of county.** (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and duly certified, together with a legal description of the new boundaries of each affected county, in the office of the secretary of state. Ninety days after the date of such filing:

(a) the new county is considered to be fully created;

(b) the organization thereof of the new county is considered completed; and

(c) any new county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed ~~must~~ shall immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by his ~~the administrator's~~ signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices.”

**Section 268.** Section 7-2-2227, MCA, is amended to read:

**“7-2-2227. Qualification, oath of office, and bond.** (1) Each person elected or appointed to fill an office of such a new county under the provisions of this part shall qualify in the manner provided by law for such that officer, except as otherwise provided in this part, and shall enter upon the discharge of the duties of his the office within such the time as herein provided in this part after the receipt of the certificate of his election.

(2) Each of such the officers may take the oath of office before any officer authorized by the laws of Montana to administer oaths.

(3) The bond of any officer from which a bond is required shall must be approved by any a judge of the district court of the district to which such the new county is attached for judicial purposes.”

**Section 269.** Section 7-2-2228, MCA, is amended to read:

**“7-2-2228. Judicial district for new county.** Said A new county, when created and organized in pursuance of the provisions of pursuant to this part, shall must be attached to such the judicial district as may be designated by the governor of Montana, in a proclamation to be issued by him designating such the new county as attached to the particular judicial district for judicial purposes.”

**Section 270.** Section 7-2-2242, MCA, is amended to read:

**“7-2-2242. Conduct of business by commission.** (1) The commissioners provided for in 7-2-2241 shall, within 10 days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman presiding officer and also by electing a secretary, who must may not be a member of said the commission. Thereafter, such the commission may meet at such a place or places as that it may select. A majority

of ~~such~~ *the* commissioners ~~shall constitute~~ *constitutes* a quorum for the transaction of business.

(2) (a) ~~Said~~ *The* commission ~~shall have power to~~ *may* compel by citation or subpoena, signed by ~~their president~~ *its presiding officer* and secretary, the attendance of ~~such~~ persons and the production of ~~such~~ books and papers before ~~said~~ *the* commission ~~as that~~ *as that* may be required in the performance of the duties imposed by this part, except that the official records of any county or counties from which ~~said~~ *the* new county was formed ~~shall in no case~~ *may not* be taken away from the county seat of ~~said~~ *the* original county.

(b) It ~~shall be~~ *is* the duty of the sheriff of any county to execute in ~~his~~ *that* county all lawful orders and citations of the ~~said~~ commission, and for ~~any~~ *the* services ~~so~~ performed, the sheriff ~~shall be~~ *is* allowed the same fees ~~as that~~ *as that* are allowed ~~to him~~ for services in civil actions.

(c) All witnesses attending before ~~said~~ *the* commission ~~shall be~~ *are* entitled to the same compensation and mileage ~~as that~~ *as that* is allowed to witnesses in courts of record. ~~No~~ *A* witness ~~shall~~ *may not* be excused from attendance at the time and place mentioned in ~~said~~ *the* order or citation by reason of the failure of the officer making ~~such~~ *the* service to tender to ~~such~~ *the* witness ~~his~~ fees and mileage in advance.”

**Section 271.** Section 7-2-2255, MCA, is amended to read:

**“7-2-2255. Transfer of court files and actions.** (1) The files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county ~~shall~~ *must* be delivered by the clerk of the district court of the old county to the clerk of the district court of the new county to be kept and preserved ~~by him~~ *as* permanent files of ~~such~~ *the* new county, ~~to the end~~ *so* that only the minutes and other entries in books kept by the clerk of the district court need *to* be transcribed.

(2) All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county ~~shall~~ *must*, ~~forthwith~~ upon the delivery of the files ~~in said action~~ to the clerk of the district court of the new county as provided in subsection (1), be transferred to the district court in which the new county may be attached for judicial purposes and ~~thereafter~~ *shall be* ~~are~~ subject to the same laws as if ~~said~~ *the* action had been originally brought in the district court of the new county.”

**Section 272.** Section 7-2-2405, MCA, is amended to read:

**“7-2-2405. Certification of accuracy of transcription.** (1) When the transcript of ~~such~~ *the* records provided for ~~herein~~ ~~shall be~~ *in this part are* completed and approved by the county commissioners of ~~such~~ *the* county, they ~~shall~~ *must* be delivered to the county clerk and recorder of the county from which ~~such~~ *the* records were taken. It ~~shall be~~ *is* the duty of ~~such~~ *the* county clerk and recorder to compare the records ~~so~~ transcribed with the original records as the ~~same~~ *records* appear on the record books of the ~~said~~ original county. The county clerk and recorder to whom the transcript ~~shall be~~ *is* delivered for comparison shall certify under oath that the transcribed records are full, complete, and exact copies of the original records.

(2) The county clerk and recorder ~~shall be~~ *is* entitled to \$6 *per a* day for *his* the time actually spent in comparing the ~~said~~ records, to be paid out of the general fund of the county requiring ~~such the~~ comparison and certificate.”

**Section 273.** 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 wherever there has been an action or proceeding begun affecting any real property situated within ~~such the~~ new county, whether ~~such the~~ action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in ~~such the~~ real property ~~so~~ affected by ~~such the~~ action or proceeding requesting the transfer of the files and papers and records of ~~such the~~ action or proceeding to the office of the clerk of the district court of the new county ~~wherein such in which the~~ real property is situated, it ~~shall be~~ *is* the duty of the judge of the district court in which ~~said the~~ action or proceeding was originally begun to order that a transfer of all the files and papers of ~~such the~~ action or proceeding be made to the office of the clerk of the district court of the new county in which ~~such the~~ real property is situated. When ~~such~~ an order of transfer is made, it ~~shall be~~ *is* the duty of the clerk of the district court ~~wherein such in which the~~ action or proceeding was originally instituted to transmit all of the files and papers in ~~such the~~ action or proceeding, together with a certified copy of all minutes of the court relating to ~~such the~~ action or proceeding, to the clerk of ~~such the~~ new county in which the real property, the subject matter of ~~such the~~ action or proceeding, is situated.

(2) ~~Said~~ *The* clerk of the district court of the new county in which ~~said the~~ property is situated shall, upon the receipt of ~~such the~~ files and papers and certified copies of the minutes of the court, file ~~said the~~ papers in ~~his the~~ clerk’s office as transferred files from the original county and shall enter and transcribe upon ~~his the~~ clerk’s records any final judgment or decree or order contained in ~~such the~~ files or papers or records ~~so~~ 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 ~~such the~~ new county in which ~~such the~~ files and papers ~~shall~~ have been transferred ~~shall have~~ *has* the same jurisdiction with reference to ~~said the~~ real property for the enforcement of any decree, judgment, or order that may have been entered ~~therein~~ or for ~~such~~ other proceedings as *that* may be necessary in ~~such the~~ action or proceeding as the district court had in the county ~~wherein such in which the~~ action or proceeding was originally begun.”

**Section 274.** Section 7-2-2412, MCA, is amended to read:

**“7-2-2412. Fees for transfer of court records.** (1) The clerk of the district court ~~wherein such in which an~~ action or proceeding was originally begun ~~shall be~~ *is* entitled to receive, for transferring ~~such the~~ files, ~~and~~ papers, and certified copies of the minutes and records entered in connection with ~~such the~~ action or proceeding, ~~no other~~ *only* a fee ~~than~~ *at* the rate of 20 cents per folio for copies of minutes ~~made by him~~ and 50 cents for *a* certificate fee.

(2) The clerk of the district court of the new county to which ~~such~~ files and papers may be transferred in accordance with the provisions of 7-2-2411 ~~shall is~~ not be entitled to any fees for the filing of ~~such the~~ transferred records, but for the filing of any papers that may be filed ~~thereafter~~ *after the transfer* in connection with ~~such an~~ action or proceeding or for the issuance of any writs or other papers, ~~such the~~ clerk ~~shall be~~ *is* entitled to charge the same fees as ~~now~~ provided by law.”

**Section 275.** Section 7-2-2423, MCA, is amended to read:

**“7-2-2423. Correction of jury lists for old counties.** The clerk or clerks of the district court of the county or counties from which ~~such~~ *the* new county has been created shall, after the creation of ~~such~~ *the* new county, remove from the list of jurors and jury boxes of ~~his or their~~ *the clerk’s* county or counties the names of all persons upon the list ~~which~~ *that* may have been filed with ~~him or them~~ *the clerk* by the jury commission who may appear to ~~him or them~~ *the clerk* to be residents of the new county and ~~so~~ certified by ~~him~~ *the clerk* as ~~aforsaid~~ *provided in 7-2-2422.*”

**Section 276.** Section 7-2-2502, MCA, is amended to read:

**“7-2-2502. Petition to change county name.** (1) Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

(2) A petition for the change of the name, ~~designation, appellation, cognomen, or title~~ of any county in this state must be signed by a number of the legal voters who are taxpayers in ~~such~~ *the* county equal, at least, to 25% of the whole number of votes cast for the office of governor of Montana in ~~such~~ *the* county at the gubernatorial election ~~next~~ preceding the circulation of ~~such~~ *the* petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching ~~his~~ *the voter’s* name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for ~~such~~ *the* change of name and must be entitled in and addressed to the appropriate district court.”

**Section 277.** Section 7-2-2503, MCA, is amended to read:

**“7-2-2503. Form of petition.** (1) ~~The following shall be substantially the~~ form of petition for any change of name of a county, as provided in this part, *must be substantially as follows:*

In the district court of the .... judicial district of the state of Montana, in and for the county of .....

Petition for the change of the name of ..... County

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

We, the undersigned legal voters of the county of ...., state of Montana, respectfully petition the honorable district court ~~aforsaid~~ that the name of .... County, Montana, be changed to the name of .... County, Montana.

The reasons for the proposed change of name ~~as aforsaid~~ are as follows (here set out reasons):

We further petition this honorable court to appoint a time for the hearing of this petition and of ~~such~~ objections ~~thereto as to this petition~~ that may be filed before ~~such~~ *that* date.

Each voter whose signature is ~~hereby~~ affixed ~~hereby~~ certifies that ~~he~~ *the voter* has personally signed this petition and that the residence, post-office address, and voting precinct of ~~such~~ *the* signer are correctly written after ~~his~~ *the* signature appearing ~~hereon~~.

Name	Residence	P.O. Address	Voting Precinct
.....			

Numbered lines for names.

(2) ~~Every such~~ *Each* sheet for ~~petitioner's signature shall~~ *petitioners' signatures must* be attached to a full and correct copy of the petition, and ~~such~~ *the* petition may be filed with the clerk of the district court ~~aforsaid~~ in sections for convenience in handling.”

**Section 278.** Section 7-2-2504, MCA, is amended to read:

**“7-2-2504. Verification of petition signatures — county clerk's certification.** (1) The county clerk of the county in which ~~said the~~ *the* petition ~~shall provided for in 7-2-2503 must~~ be signed shall compare the signatures of the voters signing the ~~same~~ *petition* with their signatures on the registration books and blanks on file in ~~his the~~ *the clerk's* office for the preceding general election. The county clerk ~~shall may~~ not retain in ~~his possession any such a~~ *any* petition or any part ~~thereof of a petition~~ for a longer period than 2 days for the first 200 signatures ~~thereon~~ and 1 additional day for each 200 additional signatures or fraction ~~thereof of that number~~ on the sheets presented to ~~him the~~ *the clerk*. At the expiration of ~~such that~~ *that* time, ~~he the~~ *the clerk* shall file the ~~same~~ *petition* with the clerk of the ~~aforsaid~~ *the* district court, with ~~his the~~ *the county clerk's* certificate attached ~~thereto to the petition~~ as provided in subsection (2).

(2) After comparing the signatures, the county clerk shall attach to the sheets of ~~said the~~ *the* petition containing ~~such the~~ *the* signatures, ~~his a~~ *a* certificate to the ~~aforsaid~~ *the* district court, substantially as follows:

State of Montana, County of ...

To the honorable district court of the ... judicial district of the state of Montana, in and for the county of .....

I, ..., county clerk of the county of ..., ~~hereto~~ *hereby* certify that I have compared the signatures on (number of sheets) of the petition for change of name attached ~~hereto~~ with the signatures of ~~said~~ *said* voters as they appear on the registration books and blanks in my office; ~~and~~ I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. I further certify that the number of genuine signatures ~~hereto~~ attached equals at least 25% of the whole number of votes cast for the office of governor of Montana in ~~said the~~ *said the* county at the gubernatorial election ~~next~~ *next* preceding the circulation of this petition.

..., County Clerk

(Seal)

By ....

Deputy ....

(3) The forms ~~herein given in this section~~ are not mandatory, and if substantially followed in any petition, it ~~shall be~~ *is* sufficient, disregarding clerical and merely technical errors.”

**Section 279.** Section 7-2-2603, MCA, is amended to read:

**“7-2-2603. Withdrawal of name from petition.** At any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that ~~he the~~ *the person* desires to have ~~his the~~ *the person's* name withdrawn from ~~such the~~ *the* petition, provided that not more than one withdrawal ~~shall may~~ be permitted by the same person.”

**Section 280.** Section 7-2-2702, MCA, is amended to read:

**“7-2-2702. Petition for abandonment of county.** (1) A petition may be filed with the county clerk of a county asking that the question of abandoning



and abolishing the organization and corporate existence of the county and attaching its territory to and making the ~~same~~ *territory* a part of some adjoining county be submitted to the qualified electors of the county at an election. The petition ~~shall~~ *must* state the name of the adjoining county to which the territory of the county to be abandoned and abolished ~~shall~~ *will* be attached and made a part.

(2) The petition ~~shall~~ *must* be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of ~~such~~ *the* county, ~~shall~~ *must* contain the post-office address and voting precinct of each individual signing it, and ~~shall~~ *must* state the name and address of three individuals to whom notice of the insufficiency of the petition ~~shall~~ *must* be sent ~~in the event that~~ *if* the petition does not have the required number of signatures of registered electors signed thereto. ~~No~~ A person, after signing ~~any~~ *such* ~~the~~ petition, ~~shall~~ *may not* be allowed or permitted to withdraw ~~his~~ *the person's* signature or name ~~therefrom~~ *from the petition.*"

**Section 281.** Section 7-2-2703, MCA, is amended to read:

**"7-2-2703. Processing of petition — certification to county commissioners.** (1) It ~~shall~~ *be is* the duty of the election administrator, within 30 days after the filing of the petition, to examine it and to ascertain and determine from the registration records of the county whether the petition is signed by the required number of registered electors. The election administrator may be authorized by the board of county commissioners to employ additional help in ~~his~~ *the administrator's* office to assist ~~him~~ in the work of examining the petition, and the board shall provide for their compensation.

(2) When the examination is completed, the election administrator shall ~~forthwith~~ attach to the petition ~~his~~ *the administrator's* certificate, properly dated and signed, showing the result of ~~his~~ *the* examination. If the certificate shows that the petition is signed by the required number of registered electors, the election administrator shall ~~immediately~~ present the petition to the board ~~if the board is then in session; otherwise, at its first regular meeting after the date of the certificate.~~"

**Section 282.** Section 7-2-2705, MCA, is amended to read:

**"7-2-2705. Petition to amend proposed consolidation.** (1) At any time prior to 5 days before the date fixed for consideration and final action on ~~such~~ *the* petition, 50% of the registered electors residing within a particular part or portion of ~~such~~ *the* county may file with the county clerk of ~~such~~ *the* county a petition in writing, signed by them, ~~praying~~ *asking* that the part or portion of ~~such~~ *the* county within which ~~such~~ *the* petitioners reside ~~shall~~ not be attached to the county designated in the petition for abandonment but ~~shall~~ be attached to some other adjoining county. ~~No~~ A person, after signing ~~any~~ *such* ~~the~~ petition, ~~shall~~ *may not* be allowed or permitted to withdraw ~~his~~ *the person's* signature or name ~~therefrom~~ *from the petition.*

(2) The petition authorized by subsection (1) ~~shall~~ *must* definitely, particularly, and accurately describe the boundaries of ~~such~~ *the* part or portion of ~~said~~ *the* county ~~which~~ *said* ~~that~~ the petitioners desire to be attached to ~~such~~ *the* other adjoining county and ~~shall~~ *must* specify and name ~~such~~ *the* other adjoining county to which ~~such~~ *the* part or portion is to be attached if ~~said~~ *the* county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or

portions of ~~such the~~ county, ~~praying asking~~ that, if ~~said the~~ county is abandoned, the territory embraced within the boundaries described ~~therein in the petition~~ may be attached to and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment.”

**Section 283.** Section 7-2-2706, MCA, is amended to read:

**“7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners.** Whenever any petition is filed under 7-2-2705, the election administrator shall immediately examine the ~~same~~ *petition* and determine from the registration records of the county whether the petition has been signed by the required number of registered electors and shall attach ~~thereto his to the petition the administrator’s~~ certificate showing the total number of registered electors residing within the boundaries described in the petition and the number ~~thereof of registered electors~~ whose names appear on ~~said the~~ petition and shall deliver the petition, with the certificate attached, to the board of county commissioners when the board meets to consider and take final action on the petition for abandonment.”

**Section 284.** Section 7-2-2712, MCA, is amended to read:

**“7-2-2712. Canvass of returns — proclamation of results.** (1) The board of county commissioners of each county, acting as a canvassing board, ~~must shall~~, within 10 days after the ~~holding of the~~ election, canvass the returns of the election. Within 5 days ~~thereafter after the canvass~~, the election administrator of each county ~~must shall~~ make and enter in the records of the board a statement of the vote in the county and transmit to the secretary of state, by ~~registered or~~ certified mail, an abstract ~~thereof of the vote~~, which ~~shall~~ *must* be marked “election returns”.

(2) Within 10 days after receiving the abstracts from all counties in which the election was held and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of the board, ~~must shall~~ make and file in ~~his the~~ *secretary of state’s* office a statement of ~~it the canvass~~ and transmit a copy ~~thereof of the canvass~~ to the governor.

(3) Upon receipt of the copy, the governor shall issue a proclamation declaring the result of the election and shall file a copy of the proclamation in the office of the secretary of state and transmit a copy of the proclamation to the county clerk of each of the counties in which ~~such the~~ election was held. Each county clerk shall file the ~~same proclamation~~ in ~~his the~~ *clerk’s* office and present the ~~same proclamation~~ to the board of county commissioners of ~~his that~~ county if ~~the board is then in session; otherwise,~~ at the first meeting of the board after the copy has been received by the clerk.”

**Section 285.** Section 7-2-2750, MCA, is amended to read:

**“7-2-2750. Procedure to collect and transmit taxes when several counties involved.** (1) Whenever any levy is made under the provisions of 7-2-2745 through 7-2-2749, the county clerk of the county in which the board of county commissioners makes ~~such the~~ levy shall immediately certify ~~such the~~ levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached.

(2) (a) The county clerk of each ~~such~~ other county shall compute and extend the taxes against the property within the portion of the abandoned county ~~which that~~ has been attached to ~~his the~~ *clerk’s* county, and the treasurer of ~~such that~~

county shall collect the ~~same~~ taxes at the same time and in the same manner that other taxes are collected by ~~said~~ the county treasurer.

(b) Each ~~such~~ county treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all ~~such~~ taxes paid to and collected by ~~him and then in his hands as~~ the county treasurer to the treasurer of the county in which the board made ~~such~~ the tax levy."

**Section 286.** Section 7-2-2756, MCA, is amended to read:

**"7-2-2756. Sale of acquired real property.** (1) ~~No real~~ Real estate may not be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of ~~such~~ that county. ~~Every~~ Each sale of real estate shall must be made at public sale, and notice shall must be published as provided in 7-1-2121. ~~No such~~ The real estate shall may not be sold for a price less than 90% of the appraised value thereof.

(2) The full purchase price of any real estate so sold shall may not be required to be made in one payment; ~~but the~~ The purchaser thereof may pay the same price in four installments, the first of which shall must be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest ~~thereon~~ at not less than 5% ~~per annum~~ a year. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and ~~such~~ the contract shall must be recorded in the office of the county clerk. When payment in full has been made for real estate, the ~~chairman~~ presiding officer of the board shall execute and deliver the proper bill of sale or deed to the purchaser or ~~his~~ the purchaser's successor in interest.

(3) All real estate sold, with any improvements ~~thereon~~ on the real estate, shall be is subject to assessment and taxation annually to the purchaser or ~~his~~ the purchaser's successor in interest at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid, when ~~such~~ the real estate shall must be assessed at its full cash value. Any ~~and all~~ improvements placed on any ~~such~~ real estate after its purchase shall be are subject to assessment and taxation at the full cash value ~~thereof~~ of the improvements."

**Section 287.** Section 7-2-2757, MCA, is amended to read:

**"7-2-2757. Sale of acquired personal property.** (1) ~~No personal~~ Personal property having a value in excess of \$100 may not be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners thereof. ~~No~~ A sale of any personal property may must be made ~~except~~ at public sale after notice ~~or~~ and for a price not less than 90% of the appraised value.

(2) Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and ~~such~~ the contract shall must be recorded in the office of the county clerk. When payment in full has been made for any personal property, the ~~chairman~~

*presiding officer* of the board shall execute and deliver the proper bill of sale or deed to the purchaser or ~~his~~ *the purchaser's* successor in interest."

**Section 288.** Section 7-2-4107, MCA, is amended to read:

**"7-2-4107. Officers elected at first election.** (1) At ~~such~~ *the* election provided for in 7-2-4106, there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two ~~aldermen~~ *city council members* from each ward into which the city ~~may be~~ *is* divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two ~~aldermen~~ *city council members* from each ward;

(c) in a town, a mayor and two ~~aldermen~~ *city council members* from each ward.

(2) Those elected hold office until the first Monday of January after the first annual election and until their successors are elected and qualified. The persons ~~so~~ elected ~~must~~ *shall* qualify in the manner prescribed by law for county officers."

**Section 289.** Section 7-2-4807, MCA, is amended to read:

**"7-2-4807. Hearing on question of exclusion — resolution of exclusion.** (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, ~~lay before the same~~ *provide the council with all written communications in writing so received by him the clerk* for its consideration, ~~and if~~ *If* after considering the ~~same communications;~~ *such the council shall duly and regularly pass and adopt* *adopts* a resolution to that effect, the boundaries of ~~such the~~ *the* city or town ~~shall must~~ be altered ~~so as~~ to exclude the territory described in ~~said the~~ *the* petition. ~~Said~~ *The* resolution ~~shall must~~ also describe the streets, avenues, alleys, and public places in ~~said the~~ *the* excluded territory ~~which that~~ *are* to be vacated and abandoned.

(2) ~~Said~~ *The* resolution ~~shall become~~ *becomes* effective 30 days after its passage and approval, and ~~thereafter~~ the boundary of ~~said the~~ *the* city or town ~~shall be~~ *is* as set forth in ~~said the~~ *the* resolution.

(3) ~~Such~~ *The* resolution ~~shall may~~ not be finally adopted by ~~such the~~ *the* council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of ~~said the~~ *the* city or town immediately adjacent and contiguous to the territory sought to be excluded."

**Section 290.** Section 7-2-4913, MCA, is amended to read:

**"7-2-4913. Release of public property to county commissioners.** Except as provided in 7-2-4914, upon the disincorporation of a city or town, ~~every each~~ public officer of the city shall immediately turn over all public property of every nature and description in ~~his the~~ *the officer's* possession to the board of county commissioners of the county in which the city or town is situated."

**Section 291.** Section 7-3-102, MCA, is amended to read:

**"7-3-102. Adoption of alternative form.** Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

(1) the commission-executive form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);

(2) the commission-manager form (which may also be called the council-manager form);

(3) the commission form;

(4) the ~~commission-chairman~~ *commission-presiding officer* form;

(5) the town meeting form; or

(6) the charter form.”

**Section 292.** Section 7-3-151, MCA, is amended to read:

**“7-3-151. Treatment of suboptions for alternative forms.** (1) ~~No~~ A petition recommendation may *not* involve more than three separate suboptions, and ~~no~~ a suboption may *not* contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.

(2) A proposed plan ~~shall~~ *must* be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption ~~shall~~ *must* be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the “county attorney”):

~~Shall~~ *Must* be elected for a term of 4 years.

~~Shall~~ *Must* be appointed for a term of 4 years by the ~~chairman~~ *presiding officer* of the local governing body.”

**Section 293.** Section 7-3-179, MCA, is amended to read:

**“7-3-179. Organization of commission.** (1) Not later than 10 days after all members of the study commission have been elected or appointed, the study commission shall meet and organize at a time set by the ~~chairman~~ *presiding officer* of the governing body of the local government ~~which~~ *that* the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary ~~chairman~~ *presiding officer*, who will serve until a permanent ~~chairman~~ *presiding officer* is selected.”

**Section 294.** Section 7-3-183, MCA, is amended to read:

**“7-3-183. Commission powers.** (1) A study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they may receive no other compensation from the study commission except mileage and per diem.

(2) A study commission may contract and cooperate with other agencies, public or private, ~~as~~ *that* it considers necessary for assistance in carrying out the purposes for which the commission was established. Upon request of the

~~chairman~~ *presiding officer* of the study commission, state agencies, counties, and other local governments and the officers and employees ~~thereof of those entities~~ shall furnish or make available to the commission ~~such information as that~~ may be necessary for carrying out the commission's function.

(3) A study commission may:

(a) establish advisory boards and committees, including on them persons who are not members of the study commission;

(b) retain consultants; and

(c) do any other act consistent with and reasonably required to perform its function."

**Section 295.** Section 7-3-193, MCA, is amended to read:

**"7-3-193. Application of other sections.** (1) Except as provided in subsection (2), 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative plan of government upon recommendation by a study commission.

(2) (a) The ~~chairman~~ *presiding officer* of the study commission and not the ~~chairman~~ *presiding officer* of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new plan of local government under 7-3-157.

(c) A study commission plan may provide for existing elected officers under 7-3-158(3)."

**Section 296.** Section 7-3-203, MCA, is amended to read:

**"7-3-203. Duties of executive.** The executive shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform duties required ~~of him~~ by law, ordinance, or resolution;

(3) administer affairs of the local government;

(4) carry out policies established by the commission;

(5) recommend measures to the commission;

(6) report to the commission on the affairs and financial condition of the local government;

(7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(8) report to the commission as the commission may require;

(9) attend commission meetings and may take part in discussions;

(10) execute the budget adopted by the commission; *and*

(11) appoint, with the consent of the commission, all members of boards; except the executive may appoint without the consent of the commission temporary advisory committees established by the executive."

**Section 297.** Section 7-3-212, MCA, is amended to read:

**"7-3-212. Administrative assistants.** The executive:

(1) shall appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such the~~ administrative assistants ~~shall be~~ *are* answerable solely to the executive; or

(2) may appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the executive.”

**Section 298.** Section 7-3-220, MCA, is amended to read:

**“7-3-220. Chairman Presiding officer of commission.** The commission ~~shall must~~ have a ~~chairman presiding officer~~ who ~~shall must~~ be:

(1) elected by the members of the commission from their own number for a term established by ordinance; or

(2) selected as provided by ordinance.”

**Section 299.** Section 7-3-221, MCA, is amended to read:

**“7-3-221. Presiding officer of commission.** The presiding officer of the commission ~~shall be~~:

(1) ~~the chairman of the commission, who~~ may vote as other members of the commission;

(2) *is* the executive, who may vote as the commissioners;

(3) *is* the executive, who shall decide all tie votes of the commission but ~~shall may not~~ have ~~no other~~ *another* vote (the ~~chairman presiding officer~~ of the commission shall preside if the executive is absent); or

(4) *is* the executive, but ~~he~~ may not vote.”

**Section 300.** Section 7-3-301, MCA, is amended to read:

**“7-3-301. Commission-manager form.** The commission-manager form, (~~which may be called the council-manager form~~), consists of an elected commission, (~~which may be called the council~~), and a manager appointed by the commission, who ~~shall be~~ *is* the chief administrative officer of the local government. The manager ~~shall be~~ *is* responsible to the commission for the administration of all local government affairs placed in ~~his~~ *the manager’s* charge by law, ordinance, or resolution.”

**Section 301.** Section 7-3-304, MCA, is amended to read:

**“7-3-304. Duties of manager.** The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required ~~of him~~ by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare the commission agenda;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion; but ~~he~~ may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager.”

**Section 302.** Section 7-3-305, MCA, is amended to read:

**“7-3-305. Employees of commission-manager government.** (1) Employees appointed by the manager and ~~his~~ *the manager’s* subordinates shall ~~must~~ be administratively responsible to the manager.

(2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of ~~his~~ *the manager’s* subordinates are empowered to appoint.

(3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to ~~any~~ *such* the employee, either publicly or privately.”

**Section 303.** Section 7-3-312, MCA, is amended to read:

**“7-3-312. Appointment to boards.** All members of boards, other than temporary advisory committees established by the manager, ~~shall must~~ be appointed by:

- (1) the ~~chairman~~ *presiding officer* with the consent of the commission; ~~or~~
- (2) the manager with the consent of the commission; or
- (3) the commission.”

**Section 304.** Section 7-3-315, MCA, is amended to read:

**“7-3-315. Chairman Presiding officer of commission.** The ~~chairman~~ *presiding officer* of the commission ~~shall must~~ be:

- (1) elected by the members of the commission from their own number for a term established by ordinance;
- (2) elected by the qualified electors for a term of office; or
- (3) selected as provided by ordinance.”

**Section 305.** Section 7-3-403, MCA, is amended to read:

**“7-3-403. Role of chairman presiding officer of commission.** The ~~chairman presiding officer~~ of the commission, ~~who~~ may be referred to as the mayor, ~~shall be the presiding officer of the commission.~~ All members of boards and committees ~~shall must~~ be appointed by the *chairman presiding officer* with the consent of the commission. The ~~chairman~~ *shall presiding officer* ~~must~~ be recognized as the head of the local government unit and may vote as other members of the commission.”

**Section 306.** Section 7-3-414, MCA, is amended to read:

**“7-3-414. Chairman Presiding officer of commission.** The ~~chairman~~ *presiding officer* of the commission ~~shall must~~ be:

- (1) elected by the members of the commission from their own number for a term established by ordinance;



- (2) selected as provided by ordinance; or
- (3) elected directly by the voters for a term established by ordinance.”

**Section 307.** Section 7-3-432, MCA, is amended to read:

**“7-3-432. Legal officer.** A legal officer, (who may be called the county attorney):

- (1) ~~shall~~ *may* be elected;
- (2) ~~shall~~ *may* be appointed by the local government commission;
- (3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;
- (4) ~~shall~~ *may* be selected as provided by ordinance;
- (5) may at the discretion of the commission be selected as provided by ordinance; or
- (6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 308.** Section 7-3-433, MCA, is amended to read:

**“7-3-433. Law enforcement officer.** A law enforcement officer, (who may be called the sheriff):

- (1) ~~shall~~ *may* be elected;
- (2) ~~shall~~ *may* be appointed by the local government commission;
- (3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;
- (4) ~~shall~~ *may* be selected as provided by ordinance;
- (5) may at the discretion of the commission be selected as provided by ordinance; or
- (6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 309.** Section 7-3-434, MCA, is amended to read:

**“7-3-434. Clerk and recorder.** A clerk and recorder:

- (1) ~~shall~~ *may* be elected;
- (2) ~~shall~~ *may* be appointed by the local government commission;
- (3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;
- (4) ~~shall~~ *may* be selected as provided by ordinance;
- (5) may at the discretion of the commission be selected as provided by ordinance; or
- (6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 310.** Section 7-3-435, MCA, is amended to read:

**“7-3-435. Clerk of district court.** A clerk of district court:

- (1) ~~shall~~ *may* be elected;
- (2) ~~shall~~ *may* be appointed by the local government commission;
- (3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;
- (4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 311.** Section 7-3-436, MCA, is amended to read:

**“7-3-436. Treasurer.** A treasurer:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 312.** Section 7-3-437, MCA, is amended to read:

**“7-3-437. Surveyor.** A surveyor:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 313.** Section 7-3-438, MCA, is amended to read:

**“7-3-438. Superintendent of schools.** A superintendent of schools:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 314.** Section 7-3-439, MCA, is amended to read:

**“7-3-439. Assessor.** An assessor:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 315.** Section 7-3-440, MCA, is amended to read:

**“7-3-440. Coroner.** A coroner:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 316.** Section 7-3-441, MCA, is amended to read:

**“7-3-441. Public administrator.** A public administrator:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 317.** Section 7-3-442, MCA, is amended to read:

**“7-3-442. Auditor.** An auditor:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office.”

**Section 318.** Section 7-3-501, MCA, is amended to read:

**“7-3-501. ~~Commission-chairman~~ *Commission-presiding officer* form.**

The ~~commission-chairman~~ *commission-presiding officer* form consists of an elected commission, (which may also be referred to as the council), and a commission ~~chairman~~ *presiding officer*, (who may also be referred to as mayor or as president), elected by the members of the commission from their own number and serving at the pleasure of the commission.”

**Section 319.** Section 7-3-503, MCA, is amended to read:

**“7-3-503. Role and duties of ~~chairman~~ *presiding officer*.** The commission ~~chairman~~ *shall presiding officer*:

(1) ~~be the presiding officer of the commission;~~ *must* be recognized as the head of the local government unit, *must* have the power to vote as other members of the commission, *and must* be the chief executive officer of the local government; ~~and~~

(2) *shall* enforce laws, ordinances, and resolutions;

(3) *shall* perform duties required of ~~him~~ by law, ordinance, or resolution;

(4) *shall* administer the affairs of the local government;

(5) *shall* direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;

(6) *shall* carry out policies established by the commission;

(7) *shall* prepare the commission agenda;

(8) *shall* recommend measures to the commission;

(9) *shall* report to the commission on the affairs and financial condition of the local government;

(10) *shall* execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(11) *shall* report to the commission as the commission may require;

(12) *shall* attend commission meetings and may take part in discussions;

(13) *shall* execute the budget adopted by the commission;

(14) *shall* appoint, with the consent of the commission, all members of boards and committees; ~~except~~ *However*, the ~~chairman~~ *presiding officer* may appoint without the consent of the commission temporary advisory committees established by the ~~chairman~~;

(15) *shall* appoint, with the consent of a majority of the commission, all department heads, and the ~~chairman~~ *presiding officer* may remove department heads and may appoint and remove all other employees;

(16) *shall* prepare the budget and present it to the commission for adoption; ~~and~~

(17) *shall* exercise control and supervision over the administration of departments and boards.”

**Section 320.** Section 7-3-514, MCA, is amended to read:

**“7-3-514. Administrative assistants.** The commission ~~chairman~~ *presiding officer*:

(1) shall appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the ~~chairman~~ *presiding officer*; or

(2) may appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the ~~chairman~~ *presiding officer*.”

**Section 321.** Section 7-3-601, MCA, is amended to read:

**“7-3-601. Town meeting form.** (1) The town meeting form consists of an assembly of the qualified electors of a town, (known as a ~~town meeting~~) *“town meeting”*, an elected town ~~chairman~~ *presiding officer*, who ~~shall~~ *must* be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities of less than 2,000 persons and incorporated towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants ~~is~~ made by the state, in which case ~~such that~~ enumeration ~~shall must~~ be used for the purposes of this part. ~~Any~~ A unit of local government ~~which that~~ adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town ~~shall~~ vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.”

**Section 322.** Section 7-3-603, MCA, is amended to read:

**“7-3-603. Holding of town meeting.** (1) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town ~~chairman~~ *presiding officer* or upon petition of 10% of the qualified electors of the town, but ~~in no case not~~ by less than 10 qualified electors.

(2) All qualified electors of the town may attend the town meeting, take part in the discussion, and vote on all matters coming before the town meeting. Others may attend but ~~shall may~~ not vote or take part in the discussion except by a majority vote of the town meeting.

(3) A quorum ~~shall consist~~ *consists* of at least 10% of the qualified electors of the town, but a higher quorum requirement may be established by a majority vote of the town meeting.

(4) The election of town officials ~~shall must~~ be nonpartisan and ~~shall must~~ be by a plurality of those qualified electors present and voting. All other voting in the town meeting ~~shall must~~ be by a simple majority of those qualified electors present and voting.

(5) Election of officials ~~shall must~~ be by secret ballot. Other voting ~~shall must~~ be by secret ballot upon the request of at least five members of the town meeting.”

**Section 323.** Section 7-3-605, MCA, is amended to read:

**“7-3-605. Agenda and conduct of initial town meeting.** The first agenda of the first town meeting following the adoption of this form ~~shall must~~ be established by the local study commission. At that town meeting the ~~chairman~~ *presiding officer* of the local study commission shall preside over the election of the presiding officer of the town, after which the presiding officer of the town shall preside.”

**Section 324.** Section 7-3-606, MCA, is amended to read:

**“7-3-606. Selection, role, and duties of town chairman presiding officer.** (1) The town meeting shall elect a town ~~chairman~~ *presiding officer* for a term of not less than 1 year or more than 2 years. An unexpired term of a town ~~chairman~~ *presiding officer* ~~shall must~~ be filled at the next annual or special town meeting.

(2) The town ~~chairman~~ *presiding officer* ~~is~~ the chief executive officer of the town; and he shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required ~~of him~~ by law, ordinance, or resolution;
- (c) administer the affairs of the town;

- (d) prepare the town meeting agenda;
  - (e) attend all annual and special town meetings;
  - (f) recommend measures to the town meeting;
  - (g) report to the town on the affairs and financial condition of the town;
  - (h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;
  - (i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;
  - (j) prepare the budget and present it to the town meeting for adoption;
  - (k) exercise control and supervision of the administration of all departments and boards; *and*
  - (l) carry out policies established by the town meeting.
- (3) Compensation of the town ~~chairman shall~~ *presiding officer must* be established by ordinance but ~~shall may~~ not be reduced during the current term of the town ~~chairman~~ *presiding officer.*"

**Section 325.** Section 7-3-607, MCA, is amended to read:

**"7-3-607. Committees.** Permanent committees to advise the town ~~chairman and/or~~ *presiding officer or* the town meeting may be established and dissolved by ordinance. The town ~~chairman~~ *presiding officer* may establish temporary committees to advise ~~him~~ *the presiding officer.*"

**Section 326.** Section 7-3-612, MCA, is amended to read:

**"7-3-612. Town meeting moderator.** The town meeting shall:

- (1) elect a town meeting moderator for a term of 1 year, who ~~shall be is~~ the presiding officer of all annual and special town meetings but who ~~shall does not~~ have ~~no~~ other governmental powers; or
- (2) designate the town ~~chairman~~ *presiding officer* as presiding officer of all annual and special town meetings."

**Section 327.** Section 7-3-613, MCA, is amended to read:

**"7-3-613. Administrative assistant.** (1) The town ~~chairman~~ *presiding officer*:

- (a) shall appoint an administrative assistant to assist ~~him~~ in the supervision and operation of the affairs of the town; or
  - (b) may appoint an administrative assistant to assist ~~him~~ in the supervision and operation of the affairs of the town.
- (2) The administrative assistant ~~shall be is~~ answerable solely to the town ~~chairman~~ *presiding officer*, and the town ~~chairman~~ *presiding officer* may delegate powers to the administrative assistant ~~at his discretion.~~"

**Section 328.** Section 7-3-705, MCA, is amended to read:

**"7-3-705. Officials and personnel.** (1) The charter ~~shall must~~ specify which official of the local government will be the chief administrative and executive officer, the method of ~~his~~ *the officer's* selection, ~~his~~ *the* term of office (except that it may be at the pleasure of the selecting authority if ~~such~~ *the* officer is not elected by popular vote), the grounds for ~~his~~ *the officer's* removal, and ~~his~~ *the officer's* powers and duties. ~~Notwithstanding the foregoing~~ *However,* the charter may allocate the chief executive and the chief administrative functions

among two or more officials specified as ~~above~~ *provided in this section*, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(2) A charter form of government ~~shall~~ *must* have ~~such~~ *the* officers, departments, boards, commissions, and agencies ~~as that~~ are established in the charter, by local ordinance, or required by state law.”

**Section 329.** Section 7-3-1215, MCA, is amended to read:

**“7-3-1215. Qualifications for commission.** (1) Members of the commission must be qualified electors of the consolidated municipality and may not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit ~~his~~ *the member's* office.”

**Section 330.** Section 7-3-1219, MCA, is amended to read:

**“7-3-1219. Organization and officers of commission.** (1) At the first meeting of the commission following the special election at which the members ~~thereof of the commission~~ are first elected and ~~thereafter~~ *after that time* at its meeting on the first Monday of January following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as ~~vice-president~~ *vice president*.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by ~~this part or part 13 or this part~~ and the ordinances of the municipality. ~~He shall be recognized as~~ *The president is* the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency, ~~he~~ *the president* shall, if authorized by a vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of ~~his~~ *the president's* absence or disability, the ~~vice-president~~ *vice president* shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance ~~shall be~~ *is* ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform ~~such~~ other duties ~~as that~~ may be required by ~~this part or part 13 or this part~~ or by the commission.”

**Section 331.** Section 7-3-1220, MCA, is amended to read:

**“7-3-1220. Conduct of commission business.** (1) The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It ~~shall have power to~~ *may* compel the attendance of absent members, may punish its members for disorderly behavior, and, by a vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; ~~but no~~ *However,* a member ~~shall~~ *may not* be expelled unless notified of the charge against ~~him~~ *the member* and given an opportunity to be heard.

(2) A majority of the members elected to the commission ~~shall~~ constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in ~~such~~ *the* manner and under ~~such~~ *the* penalties ~~as may be~~ prescribed by ordinance. The affirmative vote of a

majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order, or vote; ~~except that~~ *However*, a vote to adjourn or regarding the attendance of absent members may be adopted by a majority of the members present.”

**Section 332.** Section 7-3-1221, MCA, is amended to read:

**“7-3-1221. Compensation of commission members.** (1) The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for ~~aldermen~~ *city council members* of cities of the first class.

(2) In addition to any compensation authorized by this section, each member of the commission shall ~~must~~ receive the same sum prescribed by law for county commissioners per mile for any distance in excess of 10 miles necessarily traveled in going from and returning to ~~his~~ *the member's* residence because of attendance ~~upon~~ *at* a regular or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.”

**Section 333.** Section 7-3-1228, MCA, is amended to read:

**“7-3-1228. Action on initiative petition.** (1) If an initiative petition or amended petition ~~be~~ *is* found sufficient by the clerk, ~~he~~ *the clerk* shall ~~so~~ certify *it* and shall submit the ordinance ~~therein~~ set forth *in the petition* to the commission at its next meeting, and the commission shall ~~at once~~ read and refer it to an appropriate committee, which may be a committee of the whole.

(2) Provision ~~shall~~ *must* be made for public hearings ~~upon~~ the proposed ordinance before the committee to which it is referred. ~~Thereafter~~ *After the hearings*, the committee shall report the ordinance to the commission, with its recommendations ~~thereon~~, not later than 60 days after the date on which ~~such~~ *the* ordinance was submitted to the commission by the clerk.

(3) Upon receiving the ordinance from the committee, the commission shall ~~proceed at once~~ to consider it and shall take final action ~~thereon~~ *on the ordinance* within 30 days from the date of ~~such~~ *the* committee report.”

**Section 334.** Section 7-3-1241, MCA, is amended to read:

**“7-3-1241. Appointment and removal of manager of consolidated municipality.** (1) The commission shall appoint a manager. ~~He shall~~ *The manager must* be chosen by the commission solely on the basis of his executive and administrative qualifications and ~~need is~~ not, when appointed, *required to* be a resident of the municipality. ~~No~~ *A* member of the commission shall ~~may not~~, during the time for which elected, be chosen manager. In case of the absence or disability of the manager, the commission may designate some responsible person to perform the duties of the office. The manager shall ~~must~~ receive ~~such~~ the compensation ~~as may be~~ fixed by the commission.

(2) The manager shall ~~may~~ not be appointed for a definite term but shall ~~must~~ be removable at the pleasure of the commission. ~~In case~~ *If* the commission determines to remove the manager, ~~he shall~~, ~~if he so demands upon request~~, *the manager must* be given a written statement of the reason alleged for the proposed removal and the right to be heard ~~thereon~~ *on the proposed removal* at a public meeting of the commission prior to the date on which ~~his~~ *the* final removal shall ~~take~~ *takes* effect; ~~but~~ *However*, pending and during ~~such~~ *the* hearing, the commission may suspend ~~him~~ *the manager* from office. The action of the commission in suspending or removing the manager shall ~~be~~ *is* final, ~~it being~~ *It is* the intention of this section to vest all authority and fix all responsibility for any ~~such~~ suspension or removal in the commission.”



**Section 335.** Section 7-3-1242, MCA, is amended to read:

**“7-3-1242. Role of manager.** (1) The manager ~~shall be~~ *is* the chief executive officer of the municipality.

(2) The manager ~~shall be~~ *is* responsible to the commission for the proper administration of the affairs of the municipality placed in ~~his~~ *the manager's* charge, and ~~to that end the manager shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this part or part 13 or this part. and except as he~~ *The manager may authorize the head of a department or office responsible to him the manager to appoint subordinates in such that department or office.*”

**Section 336.** Section 7-3-1244, MCA, is amended to read:

**“7-3-1244. Removal of appointees.** (1) ~~Any~~ *An* officer or employee of the municipality appointed by the manager or upon ~~his~~ *the manager's* authorization may be laid off, suspended, or removed from office or employment either by the manager or the *appointing officer by whom appointed*. Verbal or written notice of layoff, suspension, or removal given to an officer or employee or written notice left at or mailed to ~~his~~ *the officer's or employee's* usual place of residence ~~shall be~~ *is* sufficient to put ~~any such~~ *the* layoff, suspension, or removal into effect unless the person ~~so notified shall~~, within 5 days of ~~such the~~ notice, ~~demand~~ *demands* a written statement of reasons ~~therefor for the action~~ and the right to be heard ~~thereon on the action~~ before the manager. Upon ~~such the~~ demand, the officer making the layoff, suspension, or removal shall supply the person notified ~~thereof~~ with a written statement of the reasons ~~therefor for the action~~, and the manager shall fix a time and place for the public hearing. Following the public hearing, the manager shall either confirm the layoff, suspension, or removal as specified in the notice, reinstate the person ~~so notified in the service~~, or make ~~such other~~ *another* disposition of the matter as *that* in ~~his~~ *the manager's* opinion the good of the service may require.

(2) The decision of the manager ~~in any such case shall be~~ *is* final, and there ~~shall be~~ *is* no appeal ~~therefrom~~ to any officer, body, or court ~~whatsoever~~. A copy of the written statement of reasons given for any layoff, suspension, or removal and a copy of any written reply ~~thereto to the statement~~ by the officer or employee involved, together with a copy of the decision of the manager, ~~shall~~ *must* be filed as a public record in the office of the clerk.”

**Section 337.** Section 7-3-1245, MCA, is amended to read:

**“7-3-1245. Relationship of commission and manager regarding appointments and administrative service.** (1) Neither the commission nor any of its committees or members ~~shall~~ *may* direct or request the appointment of ~~any person to~~ or his removal from office or employment *of any person* by the manager or any of ~~his~~ *the manager's* subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member ~~thereof shall~~ *of the commission may* give orders to any subordinate of the manager either publicly or privately.

(2) Any violation of the provisions of this section by a member of the commission ~~shall be~~ *is* a misdemeanor, conviction of which ~~shall~~ immediately ~~forfeit~~ *forfeits* the office of the member ~~so convicted~~.”

**Section 338.** Section 7-3-1246, MCA, is amended to read:

**“7-3-1246. General duties of manager.** ~~It shall be the duty of the~~ *The* manager ~~to shall~~ act as chief conservator of the peace within the municipality, ~~to~~ supervise the administration of the affairs of the municipality, ~~to~~ see that the ordinances of the municipality and the laws of the state are enforced, ~~to~~ make ~~such~~ recommendations to the commission concerning the affairs of the municipality ~~as may seem to him desirable~~, ~~to~~ keep the commission advised of the financial conditions and future needs of the municipality, ~~to~~ prepare and submit to the commission ~~such~~ reports ~~as that~~ may be required by that body, and ~~to~~ perform ~~such~~ other duties ~~as that~~ may be prescribed by ~~this part or part 13 or this part~~ or be required ~~of him~~ by ordinance or resolution of the commission.”

**Section 339.** Section 7-3-1249, MCA, is amended to read:

**“7-3-1249. Employees and employment list.** (1) The number of assistants and other subordinates to be employed in or by each administrative department or office ~~shall must~~ be fixed by the commission, but the commission may authorize the manager to determine the number of ~~such~~ assistants and subordinates in and for a specified department or office, subject to the appropriations made ~~thereto~~ *for the department or office*.

(2) The director of finance shall maintain in ~~his~~ *the director's* office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance ~~such~~ *the* information regarding ~~his~~ *the officer's* department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer ~~shall may~~ not pay nor shall the director of finance issue ~~any a~~ warrant for the payment of any salary or compensation to ~~any a~~ person whose name does not appear upon ~~such~~ *the* list, nor shall payment be made at a rate other than that specified on ~~such~~ *the* list. Any sum paid contrary to the ~~foregoing~~ provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on ~~his~~ *the officer's* official bond. If, through the failure of ~~any an~~ officer to give information to the director of finance as required in this section or through omission or error in ~~such~~ *the* information, payment is made to any person whose name should not be on ~~such~~ *the* list or payment is made in excess of the amount ~~which~~ *that* any person whose name is rightfully on the list should receive, then the amount of ~~any such~~ *the* payment or excess payment may be recovered from the officer by reason of whose failure, omission, or error the payment or excess payment was made or from the surety on ~~his~~ *the officer's* official bond.”

**Section 340.** Section 7-3-1253, MCA, is amended to read:

**“7-3-1253. Disposition of money received by officers in official capacity.** ~~No~~ A person elected or appointed to ~~any an~~ office or position under the municipal government established by ~~this part and part 13~~ *shall be and this part is not entitled to or and may not receive for his the person's own use* any fees, emoluments, commissions, or perquisites other than the salary or compensation fixed by ~~this part and part 13 and this part~~ or by the commission; ~~and all such~~. *All* fees, emoluments, commissions, and perquisites ensuing out of the performance of official duty ~~shall~~ belong to the municipality and *must* be paid into the treasury ~~thereof of the municipality~~ at the times and in the manner provided by the general laws of the state.”

**Section 341.** Section 7-3-1254, MCA, is amended to read:

**“7-3-1254. Nonpartisan nature of government.** (1) ~~No~~ A person holding an appointive office or position in the municipal government ~~shall may not~~ directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose ~~whatever~~. ~~No~~ A person ~~shall may not~~ orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. ~~No~~ A person ~~shall may not~~ use or promise to use ~~his the person's~~ influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. ~~No~~ A person ~~shall may not~~ take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality. ~~nor shall he~~ A person ~~may not~~ knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in ~~such the~~ service of the municipality.

(2) ~~No~~ A person in the service of the municipality ~~shall may not~~ discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in ~~such~~ service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. ~~No~~ A person holding an appointive office or place in the municipal government ~~shall may not~~ act as an officer in a political organization or serve as a member of a committee of any ~~such~~ political organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) Any A person who, ~~by himself individually~~ or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction ~~thereof~~ be punished by a fine of not less than \$50 or more than \$500, ~~or by imprisonment for a term not exceeding 3 months, or by both such fine and imprisonment~~, and if ~~he the person~~ is an officer or employee of the municipality, ~~he the person~~ shall immediately forfeit ~~his the~~ office or employment.”

**Section 342.** Section 7-3-1255, MCA, is amended to read:

**“7-3-1255. Commissioners not to hold or seek other office.** ~~No~~ A person elected to the commission ~~shall may not~~, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission ~~shall become~~ *becomes* a candidate for any public office other than that of commissioner, ~~he the person~~ shall immediately forfeit ~~his place on the commission the office of commissioner.~~”

**Section 343.** Section 7-3-1257, MCA, is amended to read:

**“7-3-1257. Control of conflict of interest.** ~~No~~ An officer or employee of the municipality ~~shall may not~~ have a financial interest, direct or indirect, in any contract ~~therewith with the municipality~~ or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section ~~shall constitute~~ *constitutes* malfeasance in office, and any officer or employee found guilty ~~thereof~~ shall ~~thereby~~ forfeit ~~his the~~ office or position. ~~Any~~ A violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the

municipality ~~shall render~~ *renders* the contract involved voidable by the manager or the commission.”

**Section 344.** Section 7-3-1259, MCA, is amended to read:

**“7-3-1259. Oath of office.** ~~Every~~ *Each* officer of the municipality shall, before entering upon the duties of ~~his~~ office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, ~~which and the~~ oath or affirmation ~~shall~~ *must* be filed and kept in the office of the clerk.”

**Section 345.** Section 7-3-1304, MCA, is amended to read:

**“7-3-1304. Division of audit and accounts.** There ~~shall be~~ *is* in the department of finance a division of audit and accounts, of which the director of finance ~~shall himself be~~ *is* the head. As head of ~~such~~ *the* office, ~~he shall be~~ *the* director *is* charged with keeping the books of financial account for all departments and offices of the municipality, and whenever practicable, ~~such~~ *the* books and accounts ~~shall~~ *must* be kept in the office of the division of audit and accounts. ~~Report shall~~ *A report must* be made daily to the division of audit and accounts by each department and office, showing the receipt *and disposition* of all money ~~and the disposition thereof.~~”

**Section 346.** Section 7-3-1305, MCA, is amended to read:

**“7-3-1305. Conduct of audits.** (1) Upon the death, resignation, removal, or expiration of the term of ~~any~~ *an* officer of the municipality, the director of finance shall cause an audit and investigation of the accounts of ~~such~~ *the* officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government.

(2) In case of the death, resignation, or removal of the director of finance, the manager shall cause an audit to be made of ~~his~~ *the director's* accounts.

(3) If, as a result of ~~any~~ *such* an audit, an officer is found indebted to the municipality, the director of finance or other person making ~~such~~ *the* audit shall immediately give notice ~~thereof~~ to the commission, the manager, and the director of law, and the ~~latter~~ *director of law* shall ~~forthwith~~ proceed to collect ~~such~~ *the* indebtedness.”

**Section 347.** Section 7-3-1307, MCA, is amended to read:

**“7-3-1307. Division of purchases and supplies.** There ~~shall be~~ *is* in the department of finance a division of purchases and supplies, ~~at the~~ *The* head of ~~which there shall be~~ *the division is* a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner and with ~~such~~ *the* exceptions as *that* may be provided by ordinance and shall, under ~~such~~ *the* regulations as *that* may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. ~~He shall have~~ *The purchasing agent has* charge of ~~such~~ *the* storerooms and warehouses of the municipality ~~as that~~ the commission may by ordinance provide.”

**Section 348.** Section 7-3-1314, MCA, is amended to read:

**“7-3-1314. Payment and investigation of claims — use of warrants.** (1) ~~No~~ *A* claim against the municipality ~~shall~~ *may not* be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance ~~shall~~ *may not* issue ~~no~~ *a* warrant for the payment of a claim unless the claim is evidenced by a voucher approved by the head of the department or office

for which the indebtedness was incurred, ~~and each such~~ *The officer and his the officer's surety shall be are* liable to the municipality for all loss or damage sustained by reason of ~~his the officer's~~ negligent or corrupt approval of any a claim.

(2) (a) The director of finance shall examine all payrolls, bills, and other claims and demands against the municipality and ~~shall may not~~ *issue no a* warrant for payment unless ~~he the director~~ finds that:

(i) the claim is in proper form, correctly computed, and ~~duly~~ *approved*;

(ii) ~~that it the claim~~ is legally due and payable; and

(iii) ~~that~~ an appropriation has been made ~~therefor for the claim which that~~ has not been exhausted.

(b) ~~He The~~ *The director of finance* may investigate any claimant and for that purpose may summon ~~before him~~ any officer, agent, or employee of the municipality or any claimant or other person and examine ~~him the person~~ upon oath or affirmation ~~relative thereto concerning the claim~~. If ~~he the director~~ finds a claim to be fraudulent, erroneous, or otherwise invalid or that the appropriation out of which ~~such the~~ claim is payable has been exhausted, ~~he shall the director may~~ not issue a warrant ~~therefor for the claim~~. If the director of finance issues a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this subsection (2), ~~he the director and his the director's sureties shall be are~~ individually liable to the municipality for the amount of ~~such the~~ warrant if paid."

**Section 349.** Section 7-3-1315, MCA, is amended to read:

**"7-3-1315. Certification of certain obligations by finance director.**

(1) ~~No~~ A contract, agreement, or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds ~~shall may not~~ be entered into nor ~~shall may~~ any order for ~~such~~ expenditures be valid unless the director of finance ~~shall first certify certifies~~ to the commission that the object or purpose for which ~~such the~~ expenditure is to be made and the amount ~~thereof of the expenditure is are~~ provided for by an appropriation in the annual budget or in a supplemental budget and that the ~~same~~ *appropriation* has not been expended. The certificate of the director of finance ~~shall must~~ be filed and made a matter of record in ~~his the director's~~ office, and the appropriation for ~~such that~~ purpose ~~shall thereafter must~~ be considered as having been set aside and expended ~~to in~~ the amount of ~~such the~~ contract, agreement, or obligation.

(2) All contracts, agreements, or other obligations entered into, all ordinances and resolutions passed, and all orders adopted contrary to the provisions of subsection (1) ~~shall be are~~ void, and ~~no a~~ person ~~whatever shall may not~~ have any claim or demand against the municipality ~~thereunder~~, nor ~~shall may~~ the commission or any officer of the municipality waive or qualify the limitations fixed by subsection (1) or ~~fasten upon incur~~ for the municipality any liability ~~whatever in excess thereof of the limitations."~~

**Section 350.** Section 7-3-1317, MCA, is amended to read:

**"7-3-1317. Deposit security.** (1) Unless a bank designated as a depository ~~shall elect elects~~ to deposit securities with the treasurer as provided in subsection (2), it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited ~~therewith with the bank~~ and the interest ~~thereon on the deposit~~. Any ~~such~~ bonds of a depository ~~shall must~~ be in the aggregate

equal to the amount designated by the commission as the maximum of municipal funds ~~which that~~ may at any time be kept by ~~such the~~ depository. All surety bonds given by a bank in accordance with the provisions of this subsection ~~shall must~~ continue in force so long as funds of the municipality deposited ~~therein shall be in the bank~~ are unpaid. ~~Nothing provided herein shall~~ *This section may not* impair the rights and remedies of the municipality on ~~such the~~ bonds under the laws of the state.

(2) In lieu of the surety bonds specified in subsection (1), ~~any a~~ bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of 7-3-1322, the sinking fund of the municipality may be invested. ~~Bonds so deposited shall~~ *Deposited bonds must* be in an amount equal to the amount of municipal funds permitted at any time to be deposited with ~~such the~~ bank, ~~shall must~~ be approved by the commission, and ~~shall must~~ be accompanied by proper assignment, to the end that the bank ~~so~~ depositing and assigning ~~such the~~ bonds will safely keep and pay over to the treasurer or ~~his the treasurer's~~ order, on demand and free of exchange, all money at any time deposited ~~therein in the bank~~ with interest ~~thereon on the money~~ at the rate agreed upon and that in case of default on the part of ~~such the~~ bank, the commission ~~shall have power and authority to~~ *may* sell ~~such the~~ bonds or so much ~~thereof of the bonds~~ as may be necessary to realize the full amount of the funds deposited ~~therein~~. The bank ~~shall be~~ *is* entitled to interest on the securities ~~so~~ deposited with the treasurer, when paid, and to the return of the securities at the termination of ~~such the~~ trust so long as the bank is not in default. With the approval of the commission, a bank may at any time substitute other ~~like similar~~ securities of equal value for those ~~so~~ deposited.

(3) Bonds and other securities given by banks in accordance with this part ~~shall must~~ be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of ~~such the~~ bonds and securities kept by the director of finance or copies ~~thereof of the record~~ certified by that officer ~~shall be~~ *are* competent and prima facie evidence of the contents and tenor ~~thereof of the bonds and securities.~~

**Section 351.** Section 7-3-1319, MCA, is amended to read:

**"7-3-1319. Deposit of funds with depository banks.** (1) All funds received by the treasurer ~~shall must~~ be deposited ~~by him~~ in the designated banks in the name of the municipality, subject to the order of the treasurer, and ~~shall must~~ be distributed among the designated banks as nearly as may be in proportion to the maximum amounts ~~which that~~ they have been authorized to receive by the commission.

(2) Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which ~~shall in no case~~ *may not* be less than 2 1/2%. The interest due on ~~such the~~ deposits ~~shall must~~ be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer ~~shall at any time receive~~ *receives* or ~~have has~~ in any bank funds ~~which that~~ will probably remain on deposit 3 months or longer, ~~he the treasurer~~ may, with the approval of the commission, either take ~~therefor~~ certificates of deposit from a designated depository, payable to ~~his the treasurer's~~ order on demand and bearing a higher rate of interest, or invest ~~such the~~ funds in any bonds maturing within 6 months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank and the interest received ~~therein,~~ as of the last day of each month.

(3) ~~No~~ A bank receiving funds of the municipality on deposit ~~shall have authority to~~ *may not* pay out ~~any such~~ *the* money except upon checks drawn upon that bank signed by the treasurer.”

**Section 352.** Section 7-3-1320, MCA, is amended to read:

**“7-3-1320. Liability for deposited funds.** (1) When the funds of the municipality are deposited and kept in designated banks according to the provisions of this part, the treasurer and the sureties on ~~his~~ *the treasurer’s* official bond ~~shall be~~ *are* exempt from all liability for the loss of any funds ~~so~~ deposited if ~~such~~ *the* loss is caused by the failure, bankruptcy, or any other act or default of ~~such~~ *the* banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss ~~shall does~~ not exempt the treasurer, the members of the commission, or sureties on their respective bonds from liability.

(2) ~~Nothing provided herein shall~~ *This section may not* deprive the municipality of any right or remedy against ~~any a~~ defaulting bank or against its officers or stockholders.”

**Section 353.** Section 7-3-1322, MCA, is amended to read:

**“7-3-1322. Investment of sinking funds.** (1) The sinking funds of the municipality ~~shall~~ *must* be in charge of a sinking fund board consisting of the president, the director of finance, and the director of law. The president ~~shall be~~ *is the chairman presiding officer* and the director of finance, the secretary of the board. By and with consent of the commission, the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States, state bonds or certificates of indebtedness of Montana or any other state of the United States, bonds of the municipality, registered warrants on the treasury of ~~such~~ *the* municipality, bonds of any city in Montana, and in ~~such~~ county or school bonds of Montana ~~as~~ *that* may be approved by the commission.

(2) ~~In case~~ *If* the sinking fund is invested in bonds of the municipality, ~~such~~ *the* bonds ~~shall~~ *may* not be canceled before maturity but ~~shall~~ *must* be held by the sinking fund board and the interest ~~thereon~~ *on the bonds* paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality ~~shall become~~ *becomes* due, the sinking fund board shall, with the consent of the commission, dispose of ~~such~~ *any* of the bonds belonging to the sinking fund ~~as~~ *that*, with the money on hand belonging to the sinking fund, ~~shall be~~ *are* necessary to pay the bonds ~~so~~ becoming due.”

**Section 354.** Section 7-3-1331, MCA, is amended to read:

**“7-3-1331. Department of public works.** (1) The department of public works is in the charge of a director, who ~~shall~~:

(a) *shall* manage and *must* have charge of the construction, repair, improvement, and maintenance of all:

(i) public buildings;

(ii) ~~of~~ roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways;

(iii) ~~of~~ sewers, drains, ditches, culverts, streams, and watercourses; and

(iv) ~~of~~ boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use;:

(b) ~~He~~ shall manage and control all:

(i) public cemeteries, crematories, market places or houses, garbage and sewage disposal plants, and farms; and

(ii) all public utilities belonging to the municipality or any subdivision thereof of the municipality; and

(c) shall *must* have charge of:

(i) the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality; and

(ii) He shall have charge of the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste; and

(d) He shall also *must* be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for such each public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works shall *must* have the qualifications prescribed by law for county surveyors, and in addition to the duties required by this part or part 12 or this part and required by the ordinances of the municipality, he shall have the powers and shall, the director, either in person or by through a deputy having the qualifications prescribed by law for county surveyors, shall perform the duties required of county surveyors by the laws of the state."

**Section 355.** Section 7-3-1341, MCA, is amended to read:

**"7-3-1341. Department of law.** (1) The department of law is in the charge of a director to be appointed by the commission without definite term, who shall *must* be a resident and elector of the municipality and who shall *must* possess all of the qualifications required of county attorneys.

(2) He shall have *The director has* all the powers and, either personally or by such through designated assistants as he may designate, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition thereto, he shall be the director is chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof of the municipality. and *The director* shall perform such other duties as that may be required by the commission.

(3) He *The director* shall qualify by taking the oath of office prescribed by the constitution and by giving a bond in the amount required of a public administrator in a county of the same class. He *The director* shall *must* receive from the state as part of his the director's salary the same amount which that is paid by the state to county attorneys in counties of the same class, and the remainder of his the salary shall *must* be paid by the municipality. For all purposes in connection with criminal prosecutions, he shall the director *must* be known and designated as "county attorney of the city and county of ...."

**Section 356.** Section 7-3-1346, MCA, is amended to read:

**"7-3-1346. Department of health.** The director of the department of health shall *must* be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in this part or part 12 or this part, the director of the department of health shall have has the powers and shall perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall *The director* also have such has other powers and shall perform such other duties as that may be prescribed by ordinance."



**Section 357.** Section 7-3-1348, MCA, is amended to read:

**“7-3-1348. Superintendent of schools.** The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of ~~such~~ *that* district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent ~~shall must~~ be fixed by the commission, and ~~he shall have the superintendent has~~ the powers and *shall* perform the duties prescribed for county superintendents of schools by the laws of the state.”

**Section 358.** Section 7-3-4102, MCA, is amended to read:

**“7-3-4102. Relationship of administrative assistants and budget and finance director to mayor.** (1) The administrative assistants ~~shall be~~ *are* answerable solely to the mayor.

(2) The budget and finance director ~~shall be~~ *is* answerable solely to the mayor and ~~shall serve~~ *serves* at ~~his~~ *the* mayor’s pleasure.”

**Section 359.** Section 7-3-4201, MCA, is amended to read:

**“7-3-4201. Definitions.** In the construction of this part, the following rules ~~shall must~~ be observed unless ~~such~~ *that* construction would be inconsistent with the manifest intent or repugnant to the context of the statute:

(1) The words “~~councilman~~” “~~council member~~” or “~~alderman~~” ~~shall~~ “*city council member*” *must* be construed to mean “~~councilman~~” “~~council member~~” when applied to cities under this part.

(2) The word “electors” ~~shall must~~ be construed to mean persons qualified to vote for elective offices at regular municipal elections.

(3) The words “franchise” ~~or and~~ “right” ~~shall~~ include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, ~~which~~ *that* does not belong to citizens generally by common right.

(4) When an office or officer is named in any law referred to in this part, it ~~shall must~~, when applied to cities under this part, be construed to mean the office or officer having the same function or duties under the provisions of this part or under ordinances passed under authority ~~thereof~~ *of this part*.”

**Section 360.** Section 7-3-4205, MCA, is amended to read:

**“7-3-4205. City to be governed by mayor and councilmen council members.** ~~Every~~ *Each* city ~~shall must~~ be governed by a mayor and ~~councilmen~~ *council members*, as provided in 7-3-4215, each of whom ~~shall have~~ *has* the right to vote on all questions coming before the council.”

**Section 361.** Section 7-3-4207, MCA, is amended to read:

**“7-3-4207. Requirements of petitions.** Petitions provided for in this part ~~shall must~~ be signed by ~~none~~ *but only* legal voters of the city. Each petition ~~shall must~~ contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides and ~~his~~ *the* petitioner’s length of residence in the city. ~~It shall~~ *The petition must* also be accompanied by the affidavit of one or more legal voters of the city stating that the signers ~~thereof~~ *of the petition* were, at the time of signing, legal voters of ~~said~~ *the* city and the number of signers at the time *that* the affidavit was made.”

**Section 362.** Section 7-3-4213, MCA, is amended to read:

**“7-3-4213. Election for first city officers.** (1) If a majority of the votes cast at the election is in favor of reorganization, the city council shall, at its first regular meeting held after the election, order a special election to be held for the purpose of electing a mayor and the number of ~~councilmen~~ *council members* to which the city is entitled. The order must specify the time of holding the election, which must be held in conjunction with a regular or primary election. The mayor shall issue a proclamation setting forth the purposes for which the special election is called and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the city if there is a daily newspaper or once a week for 2 consecutive weeks in each weekly newspaper published in the city. A copy of the proclamation must be posted at each voting place within the city and in at least 10 of the most public places in the city.

(2) The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law in respect to other city elections.”

**Section 363.** Section 7-3-4214, MCA, is amended to read:

**“7-3-4214. First term of office.** (1) The mayor and ~~councilmen~~ *council members* elected at ~~such a~~ special election shall qualify and their terms of office ~~shall must~~ begin on the first Monday after their election. The terms of office of the mayor and ~~councilmen~~ *council members* or ~~aldermen~~ *city council members* in ~~such the~~ city in office at the beginning of the term of office of the ~~councilmen~~ *council members* first elected under the provisions of this part ~~shall then cease and determine end,~~ and the terms of office of all their appointed officers in force in ~~such the~~ city, except as ~~hereinafter~~ provided *in this part*, ~~shall cease and determine end,~~ as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all ~~councilmen~~ *council members* elected at ~~such the~~ special election shall expire on the first Monday in January of the first even-numbered year following their election. At the first regular city election held in the year prior to the year in which the terms of office of the mayor and ~~councilmen~~ *council members* elected at ~~such the~~ special election shall expire, a mayor and two ~~councilmen~~ *council members* must be elected in cities having a population of less than 25,000. The mayor elected at ~~such the~~ first general city election shall hold office for 4 years, one of the ~~councilmen~~ *council members* elected at ~~such the~~ first city election shall hold office for 2 years, and the other of ~~such councilmen~~ *the council members* elected at ~~such the~~ first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four ~~councilmen~~ *council members* must be elected in cities having a population of 25,000 or more, and the mayor elected at ~~such the~~ first general city election shall hold office for 4 years. Two of the ~~councilmen~~ *council members* elected at ~~such the~~ first general city election shall hold office for 2 years, and the other two of the ~~councilmen~~ *council members* elected at ~~such the~~ first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The ~~councilmen~~ *council members* elected at the first general city election shall decide by lot, in ~~such a~~ manner as *that they may select*, which ~~thereof~~ *members* shall hold the office of ~~councilman~~ *council member* the term of which expires 2 years ~~thereafter~~ *after the election* and which ~~thereof~~ *members* shall hold the office of ~~councilman~~ *the for a term of which expires* 4 years ~~thereafter~~.”

**Section 364.** Section 7-3-4215, MCA, is amended to read:

**“7-3-4215. Councilmen Council members and mayor to be elected.** (1) In every city of the third class, there ~~shall must~~ be a mayor and two ~~councilmen council members~~. In every city of the second class, there ~~shall must~~ be a mayor and two ~~councilmen council members~~. In every city of the first class having a population of less than 25,000, there ~~shall must~~ be a mayor and two ~~councilmen council members~~. In every city of the first class having a population of 25,000 or more, there ~~shall must~~ be a mayor and four ~~councilmen council members~~.

(2) The mayor and all ~~councilmen shall~~ *council members must* be elected at large.”

**Section 365.** Section 7-3-4216, MCA, is amended to read:

**“7-3-4216. General term of office.** The terms of office of the mayor and all ~~councilmen council members~~ elected after the first term ~~shall be~~ *is* 2 years.”

**Section 366.** Section 7-3-4217, MCA, is amended to read:

**“7-3-4217. Oath of office and official bond.** Every person who has been declared elected mayor or ~~councilman council member~~ shall, within 10 days ~~thereafter~~ *after the declaration*, take and file with the city clerk an oath of office in the form and manner provided by law and shall execute and give sufficient bond to the municipal corporation in the sum of \$10,000, conditioned for the faithful performance of the duties of the office. This bond ~~shall must~~ be approved by the judge of the district court of the county in which ~~such~~ *the* city is situated and *must be* filed with the clerk and recorder of the county in which ~~such~~ *the* city is situated.”

**Section 367.** Section 7-3-4218, MCA, is amended to read:

**“7-3-4218. Vacancies.** (1) Vacancies in the office of mayor or ~~councilmen shall council member must~~ be filled by appointment made by a majority vote of the remaining members of the council. If in filling ~~such a~~ *such a* vacancy a tie vote should occur, then the person to fill ~~said the~~ *the* vacancy ~~shall must~~ be determined by lot in ~~such a~~ *such a* manner ~~as said that the~~ *that the* council may provide.

(2) A person appointed to fill ~~any such a~~ *such a* vacancy shall hold ~~his~~ *his* office until the next general election and until ~~his a~~ *a* successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which ~~the person he succeeds predecessor~~ *predecessor* was elected.”

**Section 368.** Section 7-3-4220, MCA, is amended to read:

**“7-3-4220. Council meetings.** (1) Regular meetings of the council ~~shall must~~ be held on the first Monday after the election of ~~councilmen council members~~ and ~~thereafter~~ *after that meeting* at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two ~~councilmen council members~~.

(2) All meetings of the council, whether regular or special, at which any person not a city officer is admitted ~~shall must~~ be open to the public.”

**Section 369.** Section 7-3-4221, MCA, is amended to read:

**“7-3-4221. Conduct of business.** (1) (a) In cities having a mayor and two ~~councilmen council members~~, the mayor and one ~~councilman council member~~ or two ~~councilmen shall council members~~ constitute a quorum and the affirmative vote of the mayor and one ~~councilman council member~~ or the affirmative vote of two ~~councilmen shall be council members is~~ *is* necessary to adopt or reject any

motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(b) In cities having a mayor and four ~~councilmen~~ *council members*, the mayor and two ~~councilmen~~ *council members* or three ~~councilmen~~ *council members* constitute a quorum and the affirmative vote of the mayor and two ~~councilmen~~ *council members* or the affirmative vote of three ~~councilmen~~ *council members* is necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(2) Upon every vote the ayes and nays ~~shall~~ *must* be called and recorded. Every motion, resolution, or ordinance ~~shall~~ *must* be reduced to writing and read before the vote is taken ~~thereon~~. Every resolution or ordinance passed by the council must be signed by the mayor or by two ~~councilmen~~ *council members* and must be recorded before ~~the same shall be~~ *it is* in force.

(3) The mayor ~~shall be~~ *is* the president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for ~~vice-president~~ *vice president* of the council, and in case of a vacancy in the office of mayor or the absence or inability of the mayor, ~~he~~ *the vice president* shall perform the duties of the mayor.”

**Section 370.** Section 7-3-4253, MCA, is amended to read:

**“7-3-4253. Department structure and operation.** (1) The executive and administrative powers, authority, and duties in ~~such~~ *municipal commission government* cities ~~shall~~ *must* be distributed into and among departments as follows:

(a) in cities having a mayor and two ~~councilmen~~ *council members*, into three departments:

- (i) a department of accounts, finance, and public property;
- (ii) a department of public safety and charity; *and*
- (iii) a department of streets, public improvements, and parks;

(b) in cities having a mayor and four ~~councilmen~~ *council members*, into five departments:

- (i) a department of public affairs;
- (ii) a department of accounts and finance;
- (iii) a department of public safety and charity;
- (iv) a department of street and public improvements; *and*
- (v) a department of parks and public property.

(2) The council shall determine the powers and duties to be performed by each department of the city, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments, may require an officer or employee to perform duties in two or more departments, and may make ~~such~~ *rules as may be* necessary or proper for the efficient and economical conduct of the business of the city.”

**Section 371.** Section 7-3-4254, MCA, is amended to read:

**“7-3-4254. Selection and supervision of officers and employees.** (1) In cities having a mayor and two ~~councilmen~~ *council members*, the mayor ~~shall be~~

*is the* superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four ~~aldermen~~ *city council members*, the mayor ~~shall be is the~~ superintendent ~~ever of~~ the department of public affairs; ~~and the.~~ *The* mayor ~~shall have~~ *has* general supervision over all departments of the city and over all matters connected with ~~said~~ *the* city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote one ~~councilman~~ *council member* to be superintendent over each department of the city, but ~~such that~~ designation may be changed whenever it appears that the public service would be benefited ~~thereby.~~

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and ~~such~~ other officers and assistants as ~~shall be~~ provided for by ordinance and ~~which that~~ may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the *enumerated* offices, ~~the election to which is made by the council and~~ may require any officer elected by the council to perform the duties of any other officer, and shall appoint a city judge with the authority ~~now~~ conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department ~~shall be is~~ governed by the provisions of 7-33-4106 and 7-33-4122 through 7-33-4124. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council ~~shall have power from time to time to~~ *may* create, fill, and discontinue offices and employment other than ~~herein those~~ prescribed in *this section*, according to their judgment of the needs of the city, and by majority vote of all the members to remove any ~~such~~ officer or employee, except as otherwise provided for in this part; ~~and.~~ *The council* may by resolution or otherwise prescribe, limit, or change the compensation of ~~such~~ officers or employees.”

**Section 372.** Section 7-3-4255, MCA, is amended to read:

**“7-3-4255. Compensation of mayor, council members, and employees.** (1) The total compensation of ~~councilmen~~ *council members* is as follows:

(a) In cities of the third class having a population of less than 3,000, the annual salary of the mayor ~~shall may~~ not exceed \$600 and the annual salary of each ~~councilman~~ *council member* may not exceed \$500. In cities of the third class having a population of 3,000 or more, the annual salary of the mayor ~~shall may~~ not exceed \$1,000 and the annual salary of each ~~councilman~~ *council member* may not exceed \$900.

(b) In cities of the second class, the annual salary of the mayor ~~shall may~~ not exceed \$1,650 and the annual salary of each ~~councilman~~ *council member* may not exceed \$1,500.

(c) In cities of the first class having a population of less than 30,000, the annual salary of the mayor ~~shall may~~ not exceed \$4,500 and the annual salary of each ~~councilman~~ *council member* may not exceed \$3,800. In cities of the first class having a population of 30,000 and over, the annual salary of the mayor ~~shall may~~ not exceed \$4,800 and the annual salary of each ~~councilman~~ *council member* may not exceed \$4,000.

(2) Any increase in salary occasioned by the advance in class or increase in population of any city ~~shall commence~~ *commences* with the month ~~next after following~~ the publication of the census showing ~~such~~ *the* advance in class or increase in population.

(3) Every other officer or assistant ~~shall~~ *must* receive ~~such~~ *the* salary or compensation ~~as that~~ the council shall by ordinance from time to time provide, payable in equal monthly installments.

(4) The salary or compensation of all other employees of ~~such~~ *the* city ~~shall~~ *must* be fixed by the council and ~~shall be~~ *is* payable monthly or at ~~such~~ shorter periods ~~as that~~ the council ~~shall~~ *may* determine.”

**Section 373.** Section 7-3-4256, MCA, is amended to read:

**“7-3-4256. Control of conflict of interest.** (1) ~~No~~ *An* officer or employee elected or appointed in any ~~such~~ *municipal commission government* city ~~shall be interested~~ *may not have an interest*, directly or indirectly, in any contract or job for work or materials or the profits ~~thereof of the contract or job~~ or materials, supplies, or services to be furnished *to* or performed for the city. ~~No such~~ *An* officer or employee ~~shall be interested~~ *may not have an interest*, directly or indirectly, in any contract or job for work or materials or the profits ~~thereof of the contract or job~~ or services to be furnished *to* or performed for any person, firm, or corporation operating *any* interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of ~~said~~ *the* city. ~~No such~~ *An* officer or employee ~~shall~~ *may not* accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of ~~said~~ *the* city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, ~~or~~ telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any ~~such~~ person, firm, or corporation any other service ~~upon~~ *on* terms more favorable than *is* granted to the public generally. ~~Such~~ *The* prohibition of free transportation ~~shall~~ *does* not apply to ~~police~~ *police officers* or firefighters in uniform, ~~nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section.~~ Any officer or employee of ~~such~~ *the* city who, by solicitation or otherwise, ~~shall exert his~~ *exerts* influence, directly or indirectly, to influence other officers or employees of ~~such~~ *the* city to adopt ~~his~~ *the officer's or employee's* political views or to favor any particular person or candidate for office or who ~~shall~~ in any manner ~~contribute~~ *contributes* money, labor, or other valuable thing to any person for election purposes ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section ~~shall be~~ *is* a misdemeanor, and every ~~such~~ contract and agreement ~~shall be~~ *that violates the provisions of this section is* void.”

**Section 374.** Section 7-3-4257, MCA, is amended to read:

**“7-3-4257. Appointment of civil service commission.** (1) Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April ~~in~~ *of* the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after ~~his~~ appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one

commissioner for 6 years, who shall take the place of a commissioner whose term of office expires. The ~~chairman~~ *presiding officer* of the commission for each biennial period shall *must* be the member whose term first expires. ~~No~~ A person while on the ~~said~~ commission shall *may not* hold or be a candidate for any office of public trust. Two of ~~said~~ *the* members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than 3 years ~~next~~ preceding their appointment.

(2) Before entering upon the duties of ~~his~~ office, each of ~~said~~ *the* commissioners shall take and subscribe an oath, which shall *must* be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, to obey the laws, to aid ~~to secure and maintain in securing and maintaining~~ an honest and efficient force free from partisan distinction or control, and to perform the duties of ~~his~~ office to the best of ~~his~~ *the commissioner's* ability.

(3) The council, *by majority vote*, may remove any of ~~said~~ *the* commissioners during their term of office for cause, ~~a majority of councilmen voting in favor of such removal~~, and shall fill any vacancy that shall ~~occur~~ *occurs* in ~~said~~ *the* commission for the unexpired term. The city council shall provide suitable rooms in which the ~~said~~ civil service commission shall hold its meetings; ~~it shall~~ *The commission must* have a clerk, who shall keep a record of all its meetings; ~~such~~ *The city to shall* supply the ~~said~~ commission with all necessary equipment to properly attend to ~~such~~ *its* business."

**Section 375.** Section 7-3-4259, MCA, is amended to read:

**"7-3-4259. Discharge of employees.** All persons subject to ~~such~~ *the* civil service examination shall ~~be~~ *are* subject to removal from office or employment by the council for misconduct or failure to perform their duties under ~~such~~ rules as ~~it that the council~~ may adopt, and the chief of police, chief of the fire department, or any superintendent or ~~foreman~~ *lead supervisor* in charge of municipal work may peremptorily suspend or discharge any subordinate then under ~~his~~ *that person's* direction for neglect of duty or disobedience of ~~his~~ orders but shall, within 24 hours ~~thereafter~~, report ~~such~~ *the* suspension or discharge and the reason ~~therefor~~ *for the suspension or discharge* to the superintendent of ~~his~~ *the* department; ~~who~~ *The superintendent* shall ~~thereupon~~ affirm or revoke ~~such~~ *the* discharge or suspension according to the facts. ~~Such~~ *The* employee (or the officer discharging or suspending ~~him~~) *the employee* may, within 5 days of ~~such~~ *the* ruling, appeal ~~therefrom~~ to the council, which shall fully hear and determine the matter."

**Section 376.** Section 7-3-4316, MCA, is amended to read:

**"7-3-4316. Term of office for commissioners.** (1) The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election; ~~and the~~ *The* terms of office of the mayor and ~~councilmen or aldermen~~ *city council members* in ~~such a municipal commission-manager~~ city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of *part 44* and this part ~~and part 44~~ shall ~~cease and terminate~~ and the terms of office of all their appointed officers and of all of the employees of ~~such~~ *the* city or town shall ~~cease and terminate~~ as soon as the commissioners shall by resolution declare.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the *preceding* odd-numbered

year ~~last preceding~~. The terms of office of all other candidates ~~shall~~ expire on December 31 in any odd-numbered year following the special election provided for in this part at which the first commissioners are elected.”

**Section 377.** Section 7-3-4319, MCA, is amended to read:

**“7-3-4319. Designation of mayor.** (1) The mayor ~~shall be~~ *is* that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them ~~shall~~ *must* be chosen mayor by the remaining members of the commission.

(2) ~~In event of~~ *If* a vacancy in the office of the mayor *is caused* by the expiration of ~~his~~ *the* term of office, the holdover commissioner having received the highest number of votes ~~shall be~~ *is* the mayor. ~~In the event~~ *If* there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose ~~his~~ *the mayor's* successor for the unexpired term from their own number by lot.

(3) ~~In the event that~~ *If* the commissioner who is acting as mayor ~~shall be~~ *is* recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. ~~In the event of the recall of~~ *If* all the commissioners *are recalled*, the person receiving the highest number of votes at the election held to determine their successors ~~shall serve as~~ *is* the mayor.”

**Section 378.** Section 7-3-4320, MCA, is amended to read:

**“7-3-4320. Role of mayor.** The mayor ~~shall be~~ *is* the presiding officer, except that in ~~his~~ *the mayor's* absence, a president pro tempore may be chosen. The mayor shall exercise ~~such~~ *the* powers conferred and perform all duties imposed upon ~~him~~ *the mayor* by ~~this part and~~ part 44 *and this part*, the ordinances of the municipality, and the laws of the state, except that ~~he shall~~ *he shall* ~~have no power to~~ *The mayor must* veto any measure. ~~He shall~~ *The mayor must* be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.”

**Section 379.** Section 7-3-4322, MCA, is amended to read:

**“7-3-4322. Meetings of commission.** (1) At 10 a.m. on the first Monday after January 1 following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at ~~such times as~~ *that* may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings ~~shall operate to vacate~~ *vacates* the seat of a member unless ~~such~~ *the* absence ~~be~~ *is* authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call special meetings of the commission ~~upon at least 12 hours~~ *with* written notice *of at least 12 hours* to each member of the commission, served personally on each member or left at ~~his~~ *the member's* usual place of residence.”



**Section 380.** Section 7-3-4361, MCA, is amended to read:

**“7-3-4361. Appointment of city manager.** The commission shall appoint a city manager. ~~He shall~~ *The manager must* be appointed without regard to his political beliefs and may or may not be a resident of the municipality when appointed. ~~He shall hold~~ *The manager holds* office at the will of the commission.”

**Section 381.** Section 7-3-4363, MCA, is amended to read:

**“7-3-4363. Powers and duties of city manager.** (1) The powers and duties of the city manager ~~shall be~~ *are*:

(1)(a) to see that the laws and ordinances are enforced;

(2)(b) to appoint and, except as ~~herein~~ provided *in this part*, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; ~~all appointments to be upon merit and fitness alone and in the classified service all appointments to be subject to the civil service provisions of this part and part 44;~~

(3)(c) to exercise control over all the departments and divisions created ~~herein~~ *in this part* or that may ~~hereafter~~ be created by the commission;

(4)(d) to attend all meetings of the commission, with the right to take part in the discussions but ~~having no~~ *without the right to* vote;

(5)(e) to recommend to the commission for adoption ~~such~~ measures ~~as he may deem~~ *considered* necessary or expedient;

(6)(f) to keep the commission fully advised as to the financial condition and needs of the city; and

(7)(g) to perform ~~such~~ other duties ~~as may be~~ prescribed by *part 44* or this part ~~or part 44~~ or be required of ~~him~~ by ordinance or resolution of the commission.

*(2) All appointments referred to in subsection (1)(b) must be made on merit and fitness, and in the classified service all appointments are subject to the civil service provisions of part 44 and this part.”*

**Section 382.** Section 7-3-4365, MCA, is amended to read:

**“7-3-4365. Investigations by commission.** (1) The commission or any committee ~~thereof~~ *duly of the commission* authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting ~~such~~ investigations, the commission or ~~any~~ committee ~~thereof~~ may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which ~~shall~~ *must* be signed by the presiding officer of the commission or the ~~chairman~~ *presiding officer* of ~~such~~ *the* committee, ~~as the case may be, and which~~ *The subpoenas or attachments* may be served and executed by any officer authorized by law to serve subpoenas or other process. ~~No~~ *A* witness may ~~not~~ be excused from testifying ~~touching his~~ *concerning the witness’s* knowledge of the matter under investigation in any ~~such~~ inquiry, but ~~such~~ *the* testimony may not be used against ~~him~~ *the witness* in any criminal prosecution except for perjury committed upon ~~such~~ *the* inquiry.”

**Section 383.** Section 7-3-4367, MCA, is amended to read:

**“7-3-4367. Control of conflict of interest.** (1) Commissioners and other officers and employees ~~shall may~~ not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and ~~shall may~~ not hold any partisan political office or employment. Any commissioner who ~~shall cease ceases~~ to possess any of the qualifications ~~herein~~ required *in this part shall forthwith forfeit his forfeits the* office, and any ~~such~~ contract in which any member is or may be interested may be declared void by the commission.

(2) ~~No~~ A commissioner or other officer or employee of ~~said the~~ city or town ~~shall may not~~ accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation ~~upon on~~ terms more favorable than are granted to the public generally. Any violation of the provisions of this section ~~shall be is~~ a misdemeanor and ~~shall is~~ also be sufficient cause for the summary removal or discharge of the offender. ~~Such The~~ provisions for free service ~~shall do~~ not apply to ~~police men police officers~~ or firefighters in uniform or wearing their official badges ~~where the same is when the service is~~ provided by ordinance or to any commissioner, ~~or to~~ the city manager, or ~~to~~ the city attorney upon official business; or to any other employee or official of ~~said the~~ city on official business who exhibits written authority signed by the city manager.”

**Section 384.** Section 7-3-4402, MCA, is amended to read:

**“7-3-4402. Appointment of department directors.** The city manager shall appoint a director for each department, as specified ~~herein in this part~~ or as specified by ordinance of the commission, who shall serve until removed by the city manager or until ~~his the~~ director’s successor is appointed and has qualified.”

**Section 385.** Section 7-3-4403, MCA, is amended to read:

**“7-3-4403. Role of department director.** Each director shall conduct the affairs of ~~his the~~ director’s department in accordance with the rules made by the city manager and ~~shall be~~ is responsible for the conduct of the officers and employees of ~~his that~~ department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.”

**Section 386.** Section 7-3-4405, MCA, is amended to read:

**“7-3-4405. Establishment of civil service board.** (1) The commission may appoint three electors of the municipality as a civil service board, with one to serve for 2 years, one for 4 years, and one for 6 years, and to take office on January 1 after the municipality comes under the provisions of ~~this part and part 43 and this part~~ or as soon ~~thereafter after that date~~ as appointed and qualified. ~~Thereafter After the initial appointments,~~ members of the civil service board ~~shall must~~ be appointed to serve for 6 years and until their successors have been appointed and have qualified. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing ~~him the member~~ an opportunity to be heard in ~~his the member’s~~ own defense. Any vacancy ~~shall must~~ be filled by the commission for the unexpired term.

(2) Members of the board ~~shall may~~ not hold any other public office.

(3) It is ~~intended hereby the intent of this section~~ that the establishment of a civil service board ~~shall be is~~ permissive and not mandatory. If appointed, the board may be abolished at any time upon resolution ~~to that effect~~ by the commission; and ~~thereafter any the~~ civil service board appointed under the provisions of this part ~~shall cease ceases~~ to exist, ~~but so~~ *However, as long as any*

~~such a~~ civil service board ~~shall exist~~ *exists*, its operations and proceedings ~~shall must~~ be controlled as provided in this part.

(4) The salaries of the board and its employees ~~shall must~~ be determined by the commission, and a sufficient sum ~~shall must~~ be appropriated each year to carry out the civil service provisions of this part.”

**Section 387.** Section 7-3-4406, MCA, is amended to read:

**“7-3-4406. Organization of board.** Immediately after appointment, the board shall organize by electing one of its members ~~chairman~~ *presiding officer*. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint ~~such~~ other subordinates as may be provided for by appropriation.”

**Section 388.** Section 7-3-4409, MCA, is amended to read:

**“7-3-4409. Role of chief examiner.** The chief examiner ~~shall be~~ *is* the employment officer of all municipal employees coming under the classified service. ~~He~~ *The chief examiner* shall provide examinations in accordance with the regulations of the board and maintain lists of eligibles ~~of for~~ each class of the service of those meeting the requirements of ~~said the~~ regulations. Positions in the classified service ~~shall must~~ be filled ~~by him~~ from ~~such the~~ eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.”

**Section 389.** Section 7-3-4411, MCA, is amended to read:

**“7-3-4411. Procedure for discharge, demotion, or suspension of employee.** (1) An employee ~~shall may~~ not be discharged or reduced in rank or compensation until ~~he~~ *the employee* has been presented with the reasons for ~~such~~ discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in ~~his~~ *the employee's* own defense. The reason for ~~such~~ discharge or reduction and any reply in writing ~~thereto to the reason by~~ ~~such the~~ employee ~~shall must~~ be filed with the board.

(2) Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager may appeal from the decision of ~~such officer~~ to the civil service board, ~~and such~~ *The* board shall define the manner, time, and place in which ~~such an~~ appeal ~~shall be~~ *is* heard. The judgment of ~~such the~~ board ~~shall be~~ *is* final.”

**Section 390.** Section 7-3-4412, MCA, is amended to read:

**“7-3-4412. Retention of existing positions.** Any person in the employ of a municipality holding a position in the classified service at the time that the municipality comes under the provisions of ~~this part and~~ part 43 ~~and this part~~ shall, unless ~~his~~ *the person's* position ~~be is~~ abolished, retain the same *position* until discharged, reduced, promoted, or transferred in accordance ~~herewith with part 43 and this part.~~”

**Section 391.** Section 7-3-4431, MCA, is amended to read:

**“7-3-4431. Department of finance.** (1) The duties of the director of finance ~~shall~~ include:

(a) the keeping and supervision of all accounts and the custody of all public money of the municipality;

(b) the purchase, storage, and distribution of supplies needed by the various departments;

(c) the making and collection of special assessments;

(d) the issuance of licenses;

(e) the collection of license fees and taxes; and

(f) ~~such~~ other duties ~~as that~~ the commission may by ordinance require.

(2) ~~He~~ *The director of finance* shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts ~~shall must~~ be kept in the office of the department of finance. ~~He~~ *The director* shall require daily departmental reports of money receipts and the disposition ~~thereof of money~~ and shall require of each *department*, in ~~such a form as that~~ may be prescribed, current financial and operating statements exhibiting each transaction and the cost ~~thereof of the transaction~~. Upon the death, resignation, removal, or expiration of the term of any officer, ~~he~~ *the director* shall examine the accounts of ~~such that~~ officer and report ~~his the~~ findings to the city manager.

(3) ~~He shall have~~ *The director of finance* has charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of ~~such the~~ assessments to property owners and purchasers of property under contracts for deed and all other duties connected ~~therewith with the assessments~~, the collection of ~~such~~ assessments ~~as that~~ are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. ~~He~~ *The director* shall issue all licenses and collect all *license* fees ~~therefor~~ and shall ~~pay deposit~~ the ~~same fees~~ into the treasury in the manner provided by ordinance.

(4) The director of finance ~~shall be is~~ the custodian of all public money of the municipality and all other public money coming into ~~his hands the director's possession~~. ~~He~~ *The director* shall keep and preserve ~~such the~~ money in the place or places determined by ordinance or by the provisions of any law applicable ~~thereto law~~. Except as otherwise provided in ~~this part or part 43 or this part~~, ~~he~~ *the director* shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into ~~his hands in pursuance of such the director's possession pursuant to~~ regulations ~~as that~~ may be prescribed by the authorities having lawful control over ~~such the~~ funds."

**Section 392.** Section 7-3-4433, MCA, is amended to read:

**"7-3-4433. Claims and issuance of warrants.** ~~No~~ A warrant for the payment of any claim ~~shall may not~~ be issued unless ~~such the claim shall be is~~ evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing ~~such a~~ voucher, the supplies and materials delivered or work done ~~shall must~~ be ~~duly~~ inspected and certified to by the head of the proper department or office or by a person designated by ~~him the head of the department or office~~. The head of each department or office shall require proper time reports ~~from for~~ for all services rendered, to be certified by those having ~~cognizance thereof knowledge of the services~~, to serve as a basis for the preparation of payroll vouchers. Each director of a department and ~~his the director's~~ surety ~~shall be are~~ liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in ~~his the director's~~ department. Prior to the drawing of a warrant for the payment of any

voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him the director of finance and shall have power to may summon persons and examine them under oath or affirmation, which oath or affirmation he the director of finance may administer.”

**Section 393.** Section 7-3-4434, MCA, is amended to read:

**“7-3-4434. Purchase and sale of supplies and property.** (1) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality and sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have The director of finance or city manager has charge of such the storerooms and storehouses of the municipality as that may be provided by ordinance, in which shall must be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(2) He The director of finance or city manager shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no a voucher shall may not be honored unless the accompanying invoice shall be is endorsed as approved.

(3) He The director of finance or city manager may require from the director of each department, at such times as that contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(4) Upon certification that funds are available in the proper appropriations, such the goods shall must be purchased and shall must be paid for from funds in the proper department for that purpose. However, this procedure shall may not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account to be furnished to the several departments on requisition; The goods so furnished to must be paid for by the department to which the goods are furnished therewith by warrant made payable to the stores account.

(5) He shall The director of finance or city manager may not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such the department has an available appropriation balance in excess of all unpaid obligations sufficient to pay for such the supplies.

(6) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition; All proposals to must be upon precise specifications and under such rules as established by the commission shall establish. Each order of purchase or sale, to must be approved and countersigned by the city manager or his the deputy city manager.

(7) In cases of emergency, purchases may be made without competition if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such those cases, a copy of the order issued shall must be filed with the director of finance, together with a certificate by the head of the department stating the facts of the emergency. A copy of this certificate shall must be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such employ assistants and foree of office employees as may be that are necessary to properly carry out his the director's duties under the provisions of part 43 and this part and part 43. If it is found desirable, he the director may divide his the office into divisions presided

over by the following officers: *an* accountant, *a* treasurer, and *a* purchasing agent.”

**Section 394.** Section 7-3-4441, MCA, is amended to read:

**“7-3-4441. Department of public service.** Subject to the control and supervision of the city manager in all matters, the director of public service shall:

(1) manage and have charge of:

(a) the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways;

(b) ~~of~~ sewers, drains, ditches, culverts, canals, streams, and watercourses; *and*

(c) ~~of~~ boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds;:

(2) ~~He shall~~ manage market houses, sewage disposal plants and farms, and all public utilities of the municipality;: *and*

(3) ~~He shall~~ have charge of:

(a) the enforcement of all obligations of privately owned or operated public utilities enforceable by the municipality;:

(b) ~~He shall have charge of~~ the making and preservation of all surveys, maps, plans, drawings, and estimates for public work;

(c) the cleaning, sprinkling, and lighting of streets and public places;

(d) the collection and disposal of waste; and

(e) the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the department.”

**Section 395.** Section 7-3-4443, MCA, is amended to read:

**“7-3-4443. Utility connections.** (1) The director of public service ~~shall have authority to~~ *may* compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in ~~his~~ *the* director’s judgment be constructed.

(2) ~~He~~ *The* director shall cause written notice of ~~his~~ *the* determination thereof to be given to the owner of each lot or parcel of land to which ~~such~~ connections are to be made. The notice ~~shall~~ *must* state the number and character of connections required. ~~Such~~ *The* notice ~~shall~~ *must* be served by a person designated by the director of public service, in the manner provided for the service of summons in civil actions. Nonresidents of the municipality or persons who cannot be found may be served by one publication of ~~such~~ *the* notice in a daily newspaper of general circulation in the municipality if ~~such~~ *there be* *is* a newspaper and, if not, by one publication in a weekly newspaper. The notice ~~shall~~ *must* state the time within which ~~such~~ *the* connections ~~shall~~ *must* be constructed, and if they ~~be~~ *are* not constructed within the time, the work may be done by the municipality and the cost ~~thereof of the connections~~, together with a penalty of 5%, assessed against the lots and lands for which ~~such~~ *the* connections are made; ~~provided that~~ *However*, the city commission may in its discretion order and direct that the cost of making any ~~such~~ connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed 8 years, together with interest ~~thereon~~ *on the cost at a rate*

not to exceed 6% ~~per annum~~ *a year* payable annually on the deferred payments. ~~Said~~ *The* assessments ~~shall must~~ be certified and collected as other assessments for street improvements. The actual work of making ~~such the~~ connections ~~shall must~~ be done under ~~such~~ regulations ~~as that~~ are provided for by ordinance.”

**Section 396.** Section 7-3-4444, MCA, is amended to read:

**“7-3-4444. Supervision of plats.** (1) The director of public service ~~shall be~~ *is* the supervisor of plats of the municipality. ~~He~~ *The* director shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever ~~he shall deem~~ *the director considers* it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles ~~thereof of those limits~~, the ~~supervisor of plats~~ *director* shall, if ~~such the~~ plats are in accordance with the regulations prescribed ~~therefor for~~ *for* plats, endorse ~~his the~~ *the* director’s written approval ~~thereon on~~ *on* the plats.

(2) ~~No~~ A plat subdividing lands within the corporate limits or within 3 miles ~~thereof shall of those limits may not~~ be entitled to ~~record be~~ *recorded* in the recorder’s office of the county without ~~such the~~ written approval ~~so~~ *endorsed* ~~thereon on~~ *on* the plat.”

**Section 397.** Section 7-3-4461, MCA, is amended to read:

**“7-3-4461. Department of law.** (1) The head of the department of law ~~shall must~~ be an attorney ~~at law~~ who has been admitted to practice in the state of Montana and ~~shall must~~ be known as the city attorney.

(2) ~~He shall be~~ *The department head is* the legal adviser of and attorney and counsel for the municipality and for all the officers and departments ~~thereof of~~ *the municipality* in matters relating to their official duties. ~~He~~ *The department head* shall prosecute and defend all suits for and in behalf of the municipality and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned and shall endorse on each ~~his an~~ approval of the form and correctness ~~thereof of the documents~~. ~~He shall have such other~~ duties and authority ~~as are now conferred upon the city attorney by existing laws~~.

(3) ~~He~~ *The department head* shall ~~have such~~ *employ* the number of assistants ~~as that~~ the commission ~~by ordinance~~ may authorize *by ordinance*.”

**Section 398.** Section 7-3-4463, MCA, is amended to read:

**“7-3-4463. Department of public welfare.** (1) Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality and the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. ~~He shall have~~ *The director has* charge of the inspection and supervision of public amusements and entertainments. ~~He~~ *The* director shall enforce all laws, ordinances, and regulations ~~relative relating~~ *to*:

- (a) the preservation and promotion of the public health;
- (b) the prevention and restriction of disease;
- (c) the prevention, abatement, and suppression of nuisances; and

(d) the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs.

(2) ~~He~~ *The director* shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic or threatened epidemic, ~~he~~ *the director* may enforce ~~such~~ quarantine regulations ~~as~~ *that* are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, disease, and other social problems in the community and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters ~~which~~ *that* affect the public welfare.

(2)(3) The health officer of the municipality ~~shall be~~ *is* under the direction and control of the director of public welfare, ~~and~~ shall enforce all ordinances and laws relating to health, and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers. Regulations affecting the public health ~~additional~~ *in addition* to those established by general law and for the violation of which penalties are imposed ~~shall~~ *must* be enacted by the commission and enforced as provided ~~herein~~ *in this part.*”

**Section 399.** Section 7-3-4464, MCA, is amended to read:

**“7-3-4464. Department of public safety.** (1) Subject to the supervision and control of the city manager in all matters, the director of public safety ~~shall be~~ *is* the executive head of the division of police and fire. ~~He~~ *shall* *The director* is also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as ~~may be ordained~~ *prescribed* by the commission or established by the general law of Montana. ~~He~~ *shall* *The director* is also be charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) ~~Nothing herein shall~~ *This section does not* affect, impair, restrict, or repeal any provisions of general law authorizing the levying of taxes to provide for firefighters, police, and sanitary police pension funds and to create and perpetuate boards of trustees for the administration of ~~such~~ *those* funds.”

**Section 400.** Section 7-3-4465, MCA, is amended to read:

**“7-3-4465. Police department.** (1) The chief of police ~~shall have~~ *has* exclusive control of the stationing and transfer of all patrol officers and other officers and employees constituting the police force, under ~~such~~ rules ~~as~~ *that* the director of public safety may prescribe. The police force ~~shall~~ *must* be composed of a chief of police and ~~such~~ officers, patrol officers, and other employees ~~as~~ *that* the city manager may determine. In case of riot, in event of emergency, or at time of elections or similar occasions, the director of public safety may appoint additional patrol officers and officers for temporary service; who need not be in the classified service.

(2) ~~No~~ A person ~~shall~~ *may not* act as a ~~special policeman~~, special detective, or ~~other~~ special police officer for any purpose whatsoever except upon the written authority of the director of public safety. ~~Such~~ *The written* authority ~~shall~~ *must* be exercised only under the direction and control of the chief of police and for a specified time.

(3) Section 7-4-4202(1) and (4), parts 2 and 41 of chapter 32, and chapters 9 and 19 of Title 19 ~~shall~~ *are* in all respects be applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for ~~herein~~ *in this part.*”



**Section 401.** Section 7-4-505, MCA, is amended to read:

**“7-4-505. Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if ~~his~~ *the employee's* suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if ~~his~~ *the employee's* suggestion or invention directly relates to ~~his~~ *the employee's* assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the governing body.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.”

**Section 402.** Section 7-4-2108, MCA, is amended to read:

**“7-4-2108. Mileage allowance for county commissioners — expenses.**

(1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and ~~his~~ *the commissioner's* place of residence; each day that ~~such~~ *the* trip is actually made and while engaged in the performance of ~~his~~ official duties.

(2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and ~~his~~ *the commissioner's* place of residence each day that ~~such~~ *the* trip is actually made to perform official duties. Any county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than one day in the county seat to attend sessions of the board or perform ~~his~~ official duties is entitled to receive, in addition to mileage for one round trip between ~~his~~ *the commissioner's* place of residence and the county seat, \$18 per day as expenses for each day's attendance on sessions of the board while engaged in the performance of ~~his~~ official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of \$7 ~~will be~~ *is* authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, ~~no~~ reimbursement may *not* be claimed for lodging.

(5) This section does not apply to counties that have adopted *a* charter form of government.”

**Section 403.** Section 7-4-2109, MCA, is amended to read:

**“7-4-2109. Chairman *Presiding officer of board.*** The board of county commissioners must elect one of its members ~~chairman~~ *presiding officer*. The ~~chairman must~~ *presiding officer shall* preside at all meetings of the board, and in case of ~~his~~ *the presiding officer's* absence or inability to act, the members present ~~must by an order~~ *shall* select one of their number to act temporarily as ~~chairman~~ *presiding officer.*”

**Section 404.** Section 7-4-2111, MCA, is amended to read:

**“7-4-2111. Indemnity insurance for county officers.** The board of county commissioners may ~~in its discretion~~ pay a proper charge to any insurance company authorized to do business in this state for effecting insurance providing indemnity for or protection to any county officer against ~~his~~ liability for the loss, without fault, connivance, or neglect on ~~his~~ *the officer's* part, of money, securities, or other property for which ~~he~~ *the officer* is accountable to the county.”

**Section 405.** Section 7-4-2113, MCA, is amended to read:

**“7-4-2113. Liability on official bond of commissioner.** In addition to any other penalty provided in this code, ~~any~~ a county commissioner who neglects or refuses to perform any duty imposed on ~~him~~ *the commissioner* without just cause ~~therefor~~, who willfully violates any law provided for ~~his~~ *the commissioner's* government as ~~such~~ *an officer*, who fraudulently or corruptly performs any duty imposed on ~~him~~ *the commissioner*, or who willfully, fraudulently, or corruptly attempts to perform an act unauthorized by law as commissioner forfeits to the county \$500 for every ~~such~~ act, to be recovered on ~~his~~ *the commissioner's* official bond, and is further liable on ~~his~~ *the* official bond to any person injured ~~thereby~~ *by the act* for all damages sustained.”

**Section 406.** Section 7-4-2202, MCA, is amended to read:

**“7-4-2202. General qualifications for district or township offices.** ~~No~~ A person is *not* eligible to a district or township office ~~who~~ *unless the person is not*:

- (1) of ~~the voting age of voting~~ as required by the Montana constitution;
- (2) a citizen of the state; and
- (3) an elector of the district or township in which the duties of the office are to be exercised or for which ~~he~~ *the person* is elected.”

**Section 407.** Section 7-4-2207, MCA, is amended to read:

**“7-4-2207. Duty of officers to complete official business.** It is the duty of all officers to complete the business of their respective offices *prior* to the time of the expiration of their respective terms. ~~In case~~ *If* any officer, at the close of ~~his~~ *the* term, leaves to ~~his~~ *the officer's* successor official labor to be performed for which ~~he~~ *the officer* has received compensation or ~~which~~ *that* it was ~~his~~ *the officer's* duty to perform, ~~he~~ *the officer* is liable to pay to ~~his~~ *the* successor the full value of ~~such~~ *the* services, which may be recovered in any court of competent jurisdiction upon action brought against ~~him~~ *the officer* on ~~his~~ *the officer's* official bond.”

**Section 408.** Section 7-4-2210, MCA, is amended to read:

**“7-4-2210. Restriction on practice of law by certain officers.** (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing

law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as ~~such a~~ *lawyer*.

(2) ~~No~~ A county clerk, clerk of any court, or sheriff ~~shall may not~~ act as an agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during ~~his~~ *the person's* continuance in office."

**Section 409.** Section 7-4-2213, MCA, is amended to read:

**"7-4-2213. Inspection of official bonds.** (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties ~~thereon on the bonds~~ and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members ~~thereof of the board~~ that any surety upon any ~~such~~ bond has, since the approval and acceptance of ~~such the~~ bond, died or withdrawn ~~therefrom~~, left the state, disposed of all of ~~his the surety's~~ property in this state, or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of ~~his the~~ liability ~~thereon on the bond~~, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection ~~therewith with~~ and the reasons ~~thereof for the action~~.

(3) The judge shall take ~~eognizance thereof~~ *notice of* and investigate ~~such the~~ matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make ~~such the~~ bond good and sufficient according to the requirements of law and ample security for the amount ~~thereof of the bond~~."

**Section 410.** Section 7-4-2304, MCA, is amended to read:

**"7-4-2304. Petition details.** (1) ~~Said~~ A petition ~~shall for consolidation of offices must~~ be addressed to the board or boards of county commissioners of the counties affected and ~~shall must~~ set forth and state the reasons why ~~such the~~ consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing ~~such the~~ petition shall place ~~his the person's~~ printed last name, post-office address, and voting precinct after ~~his the~~ signature.

(3) For purposes of determining the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors must be the number of individuals registered to vote at the preceding general election for the county."

**Section 411.** Section 7-4-2312, MCA, is amended to read:

**"7-4-2312. Salary and bond of officer following consolidation.** (1) (a) When two or more offices are consolidated under a single officer, ~~such the~~ officer shall receive as a salary ~~an amount to be determined by the board or boards of county commissioners, but which amount must~~ *However, the salary may* not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties ~~he the officer~~ is required to perform by reason of ~~such the~~ consolidations.

(b) The board or boards shall, in June of each fourth year, adopt a resolution fixing the salary of ~~such~~ *the* officer for the term beginning with the first Monday in January immediately following the adoption of ~~such~~ *the* resolution.

(2) ~~Such~~ *The* officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties ~~he~~ *the officer* is required to perform by reason of ~~such~~ *the consolidation of offices.*”

**Section 412.** Section 7-4-2403, MCA, is amended to read:

**“7-4-2403. Official mention of principal officer includes deputies.** Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes ~~his~~ *the officer’s* deputies.”

**Section 413.** Section 7-4-2511, MCA, is amended to read:

**“7-4-2511. Collection and disposal of fees.** (1) Each salaried county officer ~~must~~ *shall* charge and collect for the use of ~~his~~ *the* county and pay into the county treasury by the 10th day in each month all fees ~~now or hereafter~~ allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. ~~Nothing in this~~ *This* subsection ~~applies~~ *does not apply* to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in ~~his~~ *the sheriff’s* custody.

(2) ~~No~~ *A* salaried county officer may ~~not~~ receive for ~~his~~ *the officer’s* own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by ~~him~~. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.”

**Section 414.** Section 7-4-2513, MCA, is amended to read:

**“7-4-2513. Filing of statements and affidavits.** The treasurer ~~must~~ *shall* file and preserve in ~~his~~ *the treasurer’s* office ~~said~~ *the* statements and affidavits provided for in 7-4-2512 and ~~must~~ *shall* issue to the officer one original and one duplicate receipt ~~therefor~~ *for the statements and affidavits*. The officer receiving ~~said~~ *the* receipts must preserve one in ~~his~~ *the officer’s* office and file the duplicate with the county clerk, ~~whereupon the clerk must~~ *who shall* charge the treasurer with the amount shown by the receipt.”

**Section 415.** Section 7-4-2515, MCA, is amended to read:

**“7-4-2515. Fees to be paid in advance.** (1) The officers mentioned in this chapter ~~must~~ *may* not in ~~any case~~ perform any official services unless the fees prescribed for ~~such~~ *the* services are paid in advance. On ~~such~~ payment, the officers ~~must~~ *shall* perform the services required. For every failure or refusal to perform *the* official duty when the fees are tendered, the officer is liable on ~~his~~ *the officer’s* official bond.

(2) The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with ~~his~~ *the* office until the fee for the ~~same~~ *recording or the service* as prescribed by law is, if demanded, paid or tendered.

(3) When any publication is required by law to be made by an officer of any suit, process, notice, order, or other paper, the costs of the ~~same~~ *publication* must be first tendered by the party, if demanded, for whom ~~such~~ *the* order of publication was granted before the officer is compelled to make ~~such~~ *the* publication.”

**Section 416.** Section 7-4-2517, MCA, is amended to read:

**“7-4-2517. Itemized receipt for fees.** Every officer, upon receiving any fees for official duty or service, may be required by the person paying the ~~same fee~~ to make ~~out in writing~~ and deliver to ~~such the~~ person a ~~particular written~~ account of ~~such the~~ fees, specifying for what they accrued, respectively, and ~~must shall issue a receipt for the same fee~~. If ~~he the officer~~ refuses or neglects to ~~do so issue an account and a receipt~~ when required, ~~he the officer~~ is liable to the party paying the ~~same fee~~ in treble the amount ~~so~~ paid.”

**Section 417.** Section 7-4-2518, MCA, is amended to read:

**“7-4-2518. Statement of fees to be posted.** (1) It is the duty of each officer entitled to collect fees to keep posted in ~~his the~~ office a plain and legible statement of the fees allowed by law.

(2) A failure to do so subjects the officer to a fine of \$100 and costs, to be recovered by the county attorney in the name of the state.”

**Section 418.** Section 7-4-2520, MCA, is amended to read:

**“7-4-2520. Misconduct concerning official fees to result in vacancy of office.** Upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees or upon proof that the officer collected fees and failed to account for the ~~same fees~~, the board of county commissioners must declare ~~his the~~ office vacant and appoint ~~his a~~ successor.”

**Section 419.** Section 7-4-2521, MCA, is amended to read:

**“7-4-2521. Designation of person to receive decedent’s warrants or paychecks — reissuance.** Any person employed by a county may file with ~~his the~~ appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent ~~had he survived~~. The employee may change the designation from time to time. A ~~designated~~ person ~~so designated~~ shall claim ~~such the~~ warrants or paychecks from the county clerk, and on sufficient proof of identity, the county clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.”

**Section 420.** Section 7-4-2602, MCA, is amended to read:

**“7-4-2602. Designation of chief deputy by county clerk.** The county clerk in counties of the first class may designate one of ~~his the~~ deputy clerks as chief deputy clerk.”

**Section 421.** Section 7-4-2616, MCA, is amended to read:

**“7-4-2616. Map book.** The county clerk ~~must shall~~ keep a well-bound book ~~which must contain~~ *containing* maps of towns, villages, or additions to the ~~same towns or villages~~ within ~~his the~~ county, together with the description, acknowledgment, or other writing ~~thereon on the maps~~.”

**Section 422.** Section 7-4-2617, MCA, is amended to read:

**“7-4-2617. Procedure to record documents.** (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, ~~he the clerk~~ must endorse upon the ~~same document~~ the time it was received, noting the year, month, day, hour, and minute of its ~~reception receipt~~, and the ~~reception receipt~~ of the instrument must be immediately entered in the county clerk and recorder’s ~~reception receipt~~ book.

(2) If the printed, written, or typed words or numbers are considered by the clerk and recorder to be illegible and not legibly reproducible, the clerk and recorder must affix to the recorded document a statement that the document is illegible and not legibly reproducible.

(3) The county clerk ~~must shall~~ record ~~said the~~ instrument without delay, together with the acknowledgment, proofs, and certificates written upon or ~~annexed attached~~ to the ~~same instrument~~ and with the plats, surveys, schedule, and other ~~attached~~ papers ~~thereto annexed~~, in the order and as of the time when the ~~same instrument~~ was received for ~~record recording~~, and ~~must shall~~ note at the foot of the record the exact time of its ~~reception~~ receipt.

(4) The county clerk ~~must shall~~ also endorse upon each instrument, paper, or notice the time when and the book and pages or document number in which it is recorded and ~~must thereafter shall~~ deliver it, upon request, to the party leaving the ~~same document~~ for ~~record recording~~ or to ~~his the party's~~ order."

**Section 423.** Section 7-4-2622, MCA, is amended to read:

**"7-4-2622. Availability of records.** All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who may desire to inspect them and may be inspected without charge. The county clerk ~~must shall~~ arrange the books of record and indexes in ~~his the~~ office in ~~such~~ suitable places ~~as to that~~ facilitate their inspection."

**Section 424.** Section 7-4-2704, MCA, is amended to read:

**"7-4-2704. Limitations on activities of county attorneys and deputy county attorneys.** (1) The county attorney, except for ~~his own personally rendered services~~, ~~must may~~ not present any claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) In each county with a population in excess of 30,000, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except ~~that he may represent himself and his:~~

- (a) for self-representation and the representation of immediate family; and
- (b) ~~except~~ as provided in subsection (4).

(3) Any deputy county attorney in a county with a population in excess of 30,000 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law except as to those matters in which ~~he the~~ deputy has a direct interest and except as provided in subsection (4).

(4) Any elected or appointed county attorney and any deputy county attorney shall, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date ~~he the person~~ takes office, to complete any pending matters remaining from any previous private practice of law. During ~~such that~~ time the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law."

**Section 425.** Section 7-4-2707, MCA, is amended to read:

**"7-4-2707. Contract for services of county attorney from another county.** The county commissioners of any county may, upon the consent of the

county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of ~~his a county attorney's~~ staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements.”

**Section 426.** 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. ~~He must~~ *The county attorney shall* attend their meetings when required and ~~must shall~~ attend and oppose all claims and accounts against the county ~~which that~~ are unjust or illegal. ~~He must~~ *The county attorney shall* defend all suits brought against ~~his the~~ county.

(2) The county attorney ~~must shall~~:

(a) give, when required and without fee, ~~his 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 ~~his 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, 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 427.** Section 7-4-2712, MCA, is amended to read:

**“7-4-2712. Prosecutorial duties.** The county attorney is the public prosecutor and ~~must shall~~:

(1) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when ~~he the county attorney~~ has information that ~~such the~~ offenses have been committed and for that purpose, whenever not otherwise officially engaged, ~~must attend upon be present and assist~~ the magistrate in cases of arrest and ~~attend appear~~ before and give advice to the grand jury whenever cases are presented to them for their consideration;

(2) draw all indictments and informations.”

**Section 428.** Section 7-4-2713, MCA, is amended to read:

**“7-4-2713. Actions to recover money.** The county attorney ~~must shall~~ prosecute all recognizances forfeited in the courts of record and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or ~~his the~~ county.”

**Section 429.** Section 7-4-2714, MCA, is amended to read:

**“7-4-2714. Recovery of illegally paid money.** Whenever the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and ~~such the~~ money has been actually paid or whenever any other county officer has drawn a warrant in ~~his the officer's~~ own favor or in favor of any other person without being authorized by the board or by

law and the same *warrant* has been paid, the county attorney is empowered and it is his duty to *shall* institute an action in the name of the county against such the person to recover the money and 25% damages for the use thereof of the money. No An order of the board therefor is necessary unnecessary to maintain this suit. Whenever the money has not been paid on the order or warrant, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same money, and no an order of the board is necessary unnecessary to maintain the action.”

**Section 430.** Section 7-4-2715, MCA, is amended to read:

**“7-4-2715. Records and reports.** The county attorney ~~must~~ *shall*:

(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings therein *in the action*;

(2) deliver receipts for money or property received in his *an* official capacity and file duplicates thereof of the receipts with the county treasurer;

(3) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him the county attorney in his *an* official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.”

**Section 431.** Section 7-4-2716, MCA, is amended to read:

**“7-4-2716. Duties related to state matters.** The county attorney ~~must~~ *shall*:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of his *the* county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state.”

**Section 432.** Section 7-4-2801, MCA, is amended to read:

**“7-4-2801. Qualifications for county surveyor and deputies.** (1) Except as provided in subsection (3), a county surveyor ~~shall~~ *must* be a registered professional engineer or registered professional land surveyor who ~~shall have~~ *has* been in active practice of his *the* profession for at least 3 years and who ~~shall have~~ *has* had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering or land surveying ~~shall~~ *be is* considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering or land surveying.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), he *the officer* shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor.”

**Section 433.** Section 7-4-2802, MCA, is amended to read:



**“7-4-2802. Employment of assistants to surveyor.** If a party for whom the county survey is made does not furnish the ~~chainmen and markers assistants~~, the surveyor may employ the necessary ~~chainmen and markers assistants~~ and receive *payment for the reasonable hire wages* of all assistants necessarily employed.”

**Section 434.** Section 7-4-2803, MCA, is amended to read:

**“7-4-2803. Situations involving use of other surveyors.** (1) Whenever the county surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the court ~~must~~ *shall* direct the survey to be made by some disinterested person. The *appointed* person ~~so appointed~~ is, for the purpose, authorized to administer and certify oaths. ~~He~~ *The appointed person* shall return the survey, verified by ~~his~~ affidavit annexed ~~thereto to the survey~~, and receive for ~~his~~ *the* services the same fees as the county surveyor would be entitled to for similar services.

(2) Whenever the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in this part, ~~it is the duty of~~ the board of county commissioners ~~to~~ *shall* employ another competent civil engineer, who ~~shall be~~ is subject to the laws governing the county surveyor.”

**Section 435.** Section 7-4-2811, MCA, is amended to read:

**“7-4-2811. Function of county surveyor.** (1) The county surveyor shall work under the direction of the board of county commissioners. ~~He shall have no power or authority to~~ *The county surveyor may not* incur any indebtedness on the part of the county without the prior order or approval of the board. The county surveyor ~~shall~~ *must* be provided with suitable office *space*, together with necessary equipment, to perform ~~his~~ *the* various duties as prescribed by law.

(2) ~~He~~ *The county surveyor* shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) ~~He~~ *The county surveyor* shall make progress reports and estimates of all work and ~~such~~ other facts in relation ~~thereto to the work~~ as may be required by the board.”

**Section 436.** Section 7-4-2813, MCA, is amended to read:

**“7-4-2813. Maintenance of records.** (1) The county surveyor shall keep in ~~his~~ *the* office a record of all surveys and plats made or caused to be made by ~~him~~ *the surveyor*, to be recorded in proper books provided for that purpose. ~~He~~ *The county surveyor* shall also keep on file and for record, in suitable plat books provided ~~therefor for that purpose~~, copies of all plats made or caused to be made by ~~him~~ *the surveyor* and have recorded ~~therein in the books~~ a description of every public highway within the county.

(2) All ~~such~~ books of record, together with original drawings and ~~the~~ original book or books of field notes, calculations, and computations, are and ~~shall~~ remain the property of the county and ~~shall~~ *must* be preserved as ~~such~~ *county records*.”

**Section 437.** Section 7-4-2814, MCA, is amended to read:

**“7-4-2814. Preparation of surveys.** (1) (a) The county surveyor ~~must~~ *shall*:

(i) make any survey that ~~may be~~ is required by order of the court or upon application of any person;

(ii) keep a correct and fair record of all surveys made by ~~him~~ *the county surveyor*;

(iii) number ~~them~~ *the surveys* progressively in the order made; and

(iv) preserve a copy of the field notes and calculations of each survey and endorse ~~thereon~~ *on the copy* its proper number.

(b) ~~A~~ *A* copy of ~~which~~ *the field notes and calculations of each survey* and a fair and accurate plat, together with the certificate of survey, must be furnished by ~~him~~ *the county surveyor* to any person upon payment of the fees allowed by law.

(c) In all surveys the courses must be expressed according to the true meridian and the variation of the magnetic meridian from the true meridian must be expressed on the plat; with the date of the survey.

(2) ~~He must~~ *The county surveyor shall* also keep a correct and plain record of all surveys made by ~~him~~ *the county surveyor* for the county or for individuals or corporations ~~which~~ *that* pertain to the public roads or bridges; in a book provided for that purpose by the county, which ~~shall~~ *must* be transmitted to ~~his~~ *the* successor in office.”

**Section 438.** Section 7-4-2901, MCA, is amended to read:

**“7-4-2901. Appointment of deputy coroners.** (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist ~~him~~ *the coroner* or act in ~~his~~ *the coroner’s* absence.

(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, a deputy ~~must~~ *shall* successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). The deputy ~~must~~ *shall* also meet the requirements for advanced education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county.”

**Section 439.** Section 7-4-2902, MCA, is amended to read:

**“7-4-2902. Vacancy in office of county coroner or disqualification of coroner.** (1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:

(a) is absent or unable to attend to ~~his~~ *his* duties or if the office of coroner is vacant and there are no qualified deputies available;

(b) is related to the deceased;

(c) is a potential party in an action concerning the death or ~~his~~ *the coroner’s* inquiry into the death may pose a conflict of interest;

(d) has not successfully completed the basic coroner course required in 7-4-2905 and there are no qualified deputies available; or

(e) is disqualified under the provisions of 46-4-201.

(2) The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county.”

**Section 440.** Section 7-4-2904, MCA, is amended to read:

**“7-4-2904. Qualifications for office of county coroner.** (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at

the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state or jurisdiction.

(2) Each coroner, before entering the duties of ~~his~~ office, ~~must shall~~:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) ~~he the individual~~ has satisfactorily completed the basic coroner course of study provided in 7-4-2905 or that ~~he the individual~~ has completed the equivalent educational requirements approved by the attorney general; or

(ii) ~~he the individual~~ intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of ~~his the~~ duties as coroner, ~~no a~~ basic coroner course was *not* offered. A coroner forfeits ~~his~~ office for failure to take and satisfactorily complete the next offering of the basic coroner course."

**Section 441.** Section 7-4-2911, MCA, is amended to read:

**"7-4-2911. Duties of county coroner.** The county coroner shall:

(1) hold inquests as provided in Title 46, chapter 4, parts 1 and 2;

(2) inquire into the cause, manner, and circumstances of all human deaths, as required in 46-4-122, and establish the identity of the deceased person;

(3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;

(4) maintain records of inquiries as required by good practice and by law;

(5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which ~~he the coroner~~ is making an inquiry;

(6) if ~~no a~~ law enforcement agency ~~has does not have~~ jurisdiction of the case, preserve evidence involving any human death, pursuant to ~~his the coroner's~~ authority, including placing under ~~his the coroner's~~ control, to the extent necessary, any personal and real property that may be related to or involved in the death;

(7) witness and certify deaths that are the result of a judicial order;

(8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;

(9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to 46-4-122; and

(10) in the cases specified in 25-3-205, discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for ~~like similar~~ services."

**Section 442.** Section 7-4-2914, MCA, is amended to read:

**"7-4-2914. Statement required before allowing accounts of coroner.**

Before allowing the accounts of the coroner, the board of county commissioners ~~must shall~~ require ~~him the coroner~~ to file with the clerk of the board a statement, in writing and verified by ~~his~~ affidavit, showing:

(1) the amount of money or other property belonging to the estate of the deceased person ~~which~~ *that* has come into ~~his~~ *the coroner's* possession since ~~his~~ *the last statement; and*

(2) the disposition made of ~~such~~ *the* property.”

**Section 443.** Section 7-4-2915, MCA, is amended to read:

**“7-4-2915. Custody and disposition of bodies held pending investigation.** (1) In the course of an inquiry authorized under the provisions of 46-4-122, the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.

(2) A dead human body in the custody of a county coroner must be held until the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by ~~him~~ *the coroner* to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner shall release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section.”

**Section 444.** Section 7-4-2923, MCA, is amended to read:

**“7-4-2923. Computation of mileage for reimbursement.** When ~~any~~ *a* coroner serves more than one process in the same cause, not requiring more than one journey from ~~his~~ *the* office, ~~he shall~~ *the coroner may* receive mileage only for the more distant service, and ~~no mileage in any case must be~~ *is not* allowed for less than 1 mile actually traveled.”

**Section 445.** Section 7-4-4101, MCA, is amended to read:

**“7-4-4101. Officers of city of first class.** (1) The officers of a city of the first class consist of:

- (a) one mayor;
- (b) two ~~aldermen~~ *city council members* from each ward; and
- (c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as ~~hereinafter~~ *provided in this part*.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

- (a) one city attorney;
- (b) one city clerk;

- (c) one city treasurer or finance officer or one city clerk-treasurer;
  - (d) one chief of police;
  - (e) one assessor;
  - (f) one street commissioner;
  - (g) one city jailer;
  - (h) one city surveyor; and
  - (i) any other officers necessary to carry out the provisions of this title.
- (4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation.”

**Section 446.** Section 7-4-4102, MCA, is amended to read:

**“7-4-4102. Officers of city of second or third class.** (1) The officers of a city of the second or third class consist of:

- (a) one mayor;
- (b) two ~~aldermen~~ *city council members* from each ward; and
- (c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city, as ~~hereinafter~~ *provided in this part.*

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge ~~shall~~ *must* be filled by appointment by the governing body or by election or may appoint a justice of the peace or the city judge of another city as judge of the city court as provided in 3-11-205.

(4) There may also be appointed by the mayor, with the advice and consent of the council:

- (a) one city attorney;
- (b) one city clerk, who is ex officio city assessor;
- (c) one city treasurer or one city clerk-treasurer;
- (d) one chief of police; and
- (e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation.”

**Section 447.** Section 7-4-4103, MCA, is amended to read:

**“7-4-4103. Officers of towns.** (1) The officers of a town consist of:

- (a) one mayor;
- (b) two ~~aldermen~~ *city council members* from each ward; and
- (c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as ~~hereinafter~~ *provided in this part.*

(3) The governing body of the town may by ordinance determine that the office of city judge must be filled either by election or *by* appointment or may appoint a justice of the peace or the city judge of another city to be judge of the city court as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title.”

**Section 448.** Section 7-4-4109, MCA, is amended to read:

**“7-4-4109. Official bond.** Each officer of a city or town who is required to give bond shall file the ~~same~~ *bond*, duly approved, within 10 days after receiving notice of ~~his~~ election or appointment or, if ~~no~~ notice ~~be~~ *is not* received, then on or before the date fixed for the assumption ~~by him~~ of the duties of the office to which ~~he may have been~~ *the officer is* elected or appointed.”

**Section 449.** Section 7-4-4112, MCA, is amended to read:

**“7-4-4112. Filling of vacancy.** (1) When ~~any~~ *a* vacancy occurs in any elective office, this position ~~shall be~~ *is* considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office ~~shall be~~ *is* limited to the unexpired term of the person who originally created the vacancy. Pending ~~such~~ *an* election and qualification, the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until ~~his~~ *a* successor is elected and qualified.

(2) If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as ~~aldermen~~ *a city council member*. The appointed ~~aldermen~~ *city council member* shall then appoint persons to any other vacant elective offices.

(3) A vacancy in the office of ~~alderman~~ *city council member* must be filled from the ward in which the vacancy exists.”

**Section 450.** Section 7-4-4211, MCA, is amended to read:

**“7-4-4211. Designation of person to receive decedent’s warrants or paychecks — reissuance.** ~~Any~~ *A* person employed by a municipality may file with ~~his~~ *the* appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent ~~had he~~ *survived*. The employee may change the designation from time to time. ~~A designated person so designated~~ shall claim ~~such~~ *the* warrants or paychecks from the city treasurer or town clerk, whichever is applicable, and on sufficient proof of identity, the city treasurer or town clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.”

**Section 451.** Section 7-4-4301, MCA, is amended to read:

**“7-4-4301. Qualifications for mayor.** (1) ~~No~~ *A* person is *not* eligible for the office of mayor unless ~~he~~ *the person*:

(a) is at least 21 years old;

(b) has been a resident of the state for at least 3 years; and

(c) has been a resident for at least 2 years preceding the election to office of the city or town or an area ~~which~~ *that* has been annexed by the city or town.

(2) The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town.”

**Section 452.** Section 7-4-4302, MCA, is amended to read:

**“7-4-4302. Term of office.** The mayor shall hold office for a term of 4 years and until the qualification of ~~his~~ *a* successor.”

**Section 453.** Section 7-4-4401, MCA, is amended to read:

**“7-4-4401. Qualifications for ~~alderman~~ *city council member*.** ~~No~~ *A* person is *not* eligible for the office of ~~alderman~~ *city council member* unless ~~he~~ *the person* is a resident for at least 60 days preceding the election to office of the ward electing ~~him~~ *the person* or of an area ~~which~~ *that* has been annexed by the city or town and placed in the ward.”

**Section 454.** Section 7-4-4402, MCA, is amended to read:

**“7-4-4402. Term of office.** (1) Except as provided in subsection (2), ~~an alderman~~ *a city council member* shall hold office for a term of 4 years and until the qualification of ~~his~~ *a* successor.

(2) At the first annual election held after the organization of a city or town under this title, the electors of the city or town ~~must~~ *shall* elect two ~~aldermen~~ *city council members* from each ward, who ~~must~~ *shall*, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of 4 years and one, for a term of 2 years and until the qualification of their successors. In the succeeding election ~~and thereafter~~ *elections*, one ~~alderman~~ *city council member* from each ward ~~will~~ *must* be elected for a 4-year term.”

**Section 455.** Section 7-4-4403, MCA, is amended to read:

**“7-4-4403. Officers of city or town council.** The council may elect a president; who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in ~~his~~ *the president's* place.”

**Section 456.** Section 7-4-4502, MCA, is amended to read:

**“7-4-4502. Duties of city clerk related to city records and papers.** ~~It is the duty of the~~ *The city clerk to shall:*

(1) file and keep all records, books, papers, or property belonging to the city or town and deliver the ~~same documents or property to~~ *his* ~~the clerk's~~ successor when qualified;

(2) make and certify copies of all records, books, and papers in ~~his~~ *the clerk's* possession on the payment of ~~like~~ *fees as* ~~that~~ *are* allowed county clerks, which ~~fees~~ *must* be paid into the city treasury;

(3) make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in ~~his~~ *the clerk's* office.”

**Section 457.** Section 7-4-4512, MCA, is amended to read:

**“7-4-4512. Duties of town clerk related to town records and papers.** ~~It shall be the duty of the~~ *The town clerk to shall* file and keep all records, books, papers, or property belonging to the town and to deliver the ~~same documents or property to~~ *his* ~~a~~ successor when qualified.”

**Section 458.** Section 7-4-4602, MCA, is amended to read:

**“7-4-4602. Appointment — term of office.** (1) The city attorney must be appointed by the mayor, subject to approval by the city council.

(2) The city attorney shall hold his office for 2 years unless suspended or removed as provided by law.”

**Section 459.** Section 7-4-4701, MCA, is amended to read:

**“7-4-4701. Term of office for city treasurer.** In cities of the first, second, and third classes, a city treasurer shall hold office for a term of 4 years and until the qualification of his a successor.”

**Section 460.** Section 7-5-101, MCA, is amended to read:

**“7-5-101. Definition.** As used in this part, “chief executive” means the elected executive in a government adopting the commission-manager form, the ~~chairman~~ *presiding officer* in a government adopting the ~~commission-chairman~~ *commission-presiding officer* form, the town ~~chairman~~ *presiding officer* in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.”

**Section 461.** Section 7-5-103, MCA, is amended to read:

**“7-5-103. Ordinance requirements.** (1) All ordinances ~~shall~~ *must* be submitted in writing in the form prescribed by resolution of the governing body.

(2) ~~No~~ An ordinance passed ~~shall~~ *may not* contain more than one comprehensive subject, which ~~shall~~ *must* be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies *must be* made available to the public.

(4) After passage and approval, all ordinances ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.”

**Section 462.** Section 7-5-135, MCA, is amended to read:

**“7-5-135. Suit to determine validity and constitutionality of petition and proposed action.** (1) The governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional, ~~but such a~~ *The* suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.

(2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.

(3) If the defendant prevails, ~~he~~ *the defendant* is entitled to be reimbursed by the local government for costs and reasonable attorney’s fees incurred.

(4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit.”

**Section 463.** Section 7-5-2127, MCA, is amended to read:

**“7-5-2127. Subpoena power of county commissioners.** (1) The board may, by its ~~chairman~~ *presiding officer* or the ~~chairman~~ *presiding officer* of any committee, issue subpoenas to compel the attendance of any person and the



production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

(2) When served, a witness is bound to attend and to answer all questions ~~which he~~ *that the witness* would be bound to answer before any court. Disobedience to the subpoena or to an order to attend or to testify may be enforced by the board, and for that purpose, the board has all the powers conferred by and the witness is subject to all the provisions of Title 26, chapter 2, parts 1 and 2; 26-2-303; and Rule 45(c), M.R.Civ.P.”

**Section 464.** Section 7-5-2130, MCA, is amended to read:

**“7-5-2130. Records to be signed.** The records must be signed by the ~~chairman~~ *presiding officer* and the clerk.”

**Section 465.** Section 7-5-4102, MCA, is amended to read:

**“7-5-4102. Powers and duties of mayor related to administration and executive function.** (1) The mayor ~~has power to~~ *may*:

(a) communicate to the council, at the beginning of ~~every~~ *each* session and more often if considered necessary, a statement of the affairs of the city or town, with ~~such~~ recommendations ~~as~~ *that* the mayor considers proper;

(b) recommend to the council ~~such~~ measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances ~~as~~ *that* the mayor considers expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;

(f) procure and have in ~~his~~ *the mayor's* custody the seal of the city or town;

(g) take and administer oaths;

(h) perform ~~such~~ other duties ~~as~~ *that* may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and ~~must~~ *shall* sign the journals ~~thereof~~ *of the council* and all warrants on the city treasury and decide all ties by ~~his~~ vote. The mayor has no other vote.”

**Section 466.** Section 7-5-4112, MCA, is amended to read:

**“7-5-4112. Reports from municipal officers.** The city or town council ~~has power to~~ *may* require from an officer at any time a report in detail of the transactions in ~~his~~ *that* office or any matter connected ~~therewith~~ *with that office*.”

**Section 467.** Section 7-5-4142, MCA, is amended to read:

**“7-5-4142. Attendance at meetings and conventions by municipal officers and employees.** Unless otherwise provided by law, ~~no~~ *a* city officer or employee may *not* receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at ~~any~~ *a* convention, meeting, or other gathering of public officers except for attendance upon ~~such~~ *a* convention, meeting, or other gathering ~~as~~ *that* the officer or employee may by virtue of ~~his~~ *the* office find it necessary to attend.”

**Section 468.** Section 7-5-4201, MCA, is amended to read:

**“7-5-4201. Municipal ordinances.** (1) The style of ordinances may be as follows: “Be it ordained by the council of the city of .... (or town of ....)”, and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in ~~his~~ *the mayor’s* stead and must be recorded in a book kept by the clerk, called “The Ordinance Book”, and numbered by numerical decimal system in the order in which they are passed or codified.

(3) ~~No~~ *An* ordinance ~~shall~~ *may not* be passed containing more than one subject, which ~~shall~~ *must* be clearly expressed in its title, except ordinances for the codification and revision of ordinances.”

**Section 469.** Section 7-5-4308, MCA, is amended to read:

**“7-5-4308. Procedure to modify contract.** (1) When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, ~~such~~ *the* alteration or modification ~~must~~ *may only* be made ~~only~~ by resolution of the council. ~~Such~~ *The* resolution is ~~of no~~ *not in* effect until the price to be paid for the ~~same~~ *work* is agreed to in writing and signed by the contractor and approved by the council.

(2) ~~No~~ *A* contractor ~~must~~ *may not* be allowed anything for extra work caused by an alteration or modification unless a resolution is made and an agreement *is* signed as provided in subsection (1). ~~He~~ *must* *A contractor may not in any case* be allowed more for ~~such~~ *the* alteration than the price fixed by ~~such~~ *the* agreement.”

**Section 470.** Section 7-5-4322, MCA, is amended to read:

**“7-5-4322. Election on question of granting franchise.** (1) Notice of the election ~~shall~~ *must* be published as provided in 13-1-108. The notice must state the time and place of holding the election, the character of any ~~such~~ franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At ~~such~~ *the* election, the ballots must contain the words “For granting franchise” and “Against granting franchise”, and in voting, the elector ~~must~~ *shall* make a cross (X) opposite the answer ~~he~~ *that the elector* intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election are “For granting franchise”, the mayor and city council ~~must thereupon~~ *shall* grant the ~~same~~ *franchise* by the passage and approval of a proper ordinance.”

**Section 471.** Section 7-6-106, MCA, is amended to read:

**“7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments.** (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which ~~shall~~ *must* be filed with the board of county commissioners and the other of which ~~shall~~ *must* be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county treasury to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision’s share in the payment. The county clerk shall draw and sign the warrants, which ~~shall~~ *must* also be signed by the ~~chairman~~ *presiding officer* of the board.

(3) (a) Except as provided in subsection (3)(b), whenever ~~such a~~ warrant is presented to the county treasurer, ~~he the treasurer~~ shall debit the proper account in the fund and shall pay the amount of ~~such the~~ warrant in full, without deduction, to the political subdivision presenting the ~~same~~ warrant.

(b) The county treasurer may not honor ~~such the~~ warrant unless it is endorsed by the president, ~~chairman~~, or other presiding officer of the governing body of the political subdivision. The endorsement of any warrant by the presiding officer of the governing body of a political subdivision as provided in this section constitutes an approval of the agreement under which the payment was received. If ~~any a~~ governing body of a political subdivision refuses to receive any warrant delivered pursuant to this section, the amount of the warrant ~~shall~~ *must* be refunded to the United States by the county."

**Section 472.** Section 7-6-207, MCA, is amended to read:

**"7-6-207. Deposit security.** (1) The local governing body may require security only for that portion of the deposits ~~which that~~ is not guaranteed or insured according to law and, as to ~~such the~~ unguaranteed or uninsured portion, to the extent of:

(a) 50% of ~~such the~~ deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security ~~shall~~ *must* consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, ~~such the~~ securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when ~~such the~~ receipt is in favor of the treasurer or town clerk and ~~his the treasurer's or clerk's~~ successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. ~~It is the duty of the~~ *The* appropriate governing body *shall*, upon the acceptance and approval of any of the ~~above-mentioned~~ bonds or securities, ~~to~~ make a complete minute entry of the acceptance and approval upon the record of ~~their its~~ proceedings, and the bonds and securities ~~shall~~ *must* be reapproved at least ~~quarter-annually thereafter~~ *quarterly*."

**Section 473.** Section 7-6-212, MCA, is amended to read:

**"7-6-212. Limitation on liability of treasurer or town clerk.** ~~Where~~ *When* money ~~shall have~~ been deposited in accordance with the provisions of this part, the treasurer or town clerk ~~shall~~ *is* not be liable for loss on account of any ~~such~~ deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than ~~his the treasurer's or clerk's~~ own neglect, fraud, or dishonorable conduct."

**Section 474.** Section 7-6-2101, MCA, is amended to read:

**"7-6-2101. Procedure if county treasurer dies in office.** (1) In case of the death of ~~any a~~ county treasurer, ~~his the treasurer's~~ legal representatives ~~must~~ *shall* deliver up all official money, books, accounts, papers, and documents ~~which that~~ come into their possession.

(2) ~~No~~ A percentage ~~must~~ *may not* be allowed to the treasurer on any money received by ~~him the treasurer~~ from the legal representative of ~~such a~~ predecessor."

**Section 475.** Section 7-6-2103, MCA, is amended to read:

**“7-6-2103. Suspension of county treasurer in case of misconduct.** Whenever ~~any~~ *a* action based upon official misconduct is commenced against ~~any~~ *a* county treasurer, the board of county commissioners may in its discretion suspend ~~him~~ *the treasurer* from office until ~~such~~ *the* suit is determined and may appoint some person to fill the vacancy.”

**Section 476.** Section 7-6-2115, MCA, is amended to read:

**“7-6-2115. Manner of settling accounts.** (1) The treasurer ~~must~~ *shall* settle ~~his~~ accounts relating to the collection, care, and disbursement of public revenue ~~of whatsoever nature and kind~~ with the county clerk on the first Monday of each month. For the purpose of making ~~such~~ *the* settlements, ~~he~~ *must* ~~the treasurer shall~~ make out a statement, under oath, of the amount of money or other property received prior to the period of ~~such~~ *the* settlement, the sources ~~whence the same was derived of the money or property,~~ and the amount of payments or disbursements and to whom, with the amount remaining on hand. ~~He~~ *must* ~~The treasurer shall,~~ in ~~such~~ *the* settlements, deposit all ~~redeemed warrants redeemed by him~~ and take the county clerk’s receipt ~~therefor for the warrants.~~

(2) ~~He~~ *must* ~~The treasurer shall~~ make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control ~~thereof of the accounts.~~”

**Section 477.** Section 7-6-2116, MCA, is amended to read:

**“7-6-2116. Receipt for money paid to county treasurer.** (1) Except as provided in subsection (2), when ~~any~~ money is paid to the county treasurer, ~~he~~ *must* ~~the treasurer shall~~ issue a receipt, in triplicate, for ~~such~~ *the* money, the original of which ~~shall~~ *must* be delivered to the person paying the ~~same~~ *money*, the duplicate of which ~~shall~~ *must* be delivered to the county clerk, and the triplicate ~~shall~~ *must* be retained in ~~his~~ *the* office.

(2) When any money is paid to the county treasurer through the mail or by any electronic means, ~~he~~ *must* ~~the treasurer shall~~ issue receipts for the money. The original receipt ~~shall~~ *must* be retained in ~~his~~ *the treasurer’s* office, and a duplicate ~~shall~~ *must* be delivered to the county clerk. Upon request, the county treasurer ~~must~~ *shall* issue a receipt to the person paying the money.”

**Section 478.** Section 7-6-2117, MCA, is amended to read:

**“7-6-2117. Receipt of money from county attorney.** (1) The county attorney ~~must~~ *shall*, on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by ~~his~~ *his* oath, of all money received by ~~him~~ *the county attorney* in ~~his~~ *an* official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

(2) If the county attorney refuses or neglects to account for and pay over money received by ~~him~~ as required by subsection (1), the county treasurer ~~must~~ *shall* bring an action against ~~him~~ *the county attorney* for the recovery ~~thereof~~ *of the money* in the name of the county and may recover in ~~such~~ *the* action, in addition to the amount ~~so~~ received, 50% ~~thereon~~ *of the amount* by way of damages.”

**Section 479.** Section 7-6-2118, MCA, is amended to read:

**“7-6-2118. Receipt of money from predecessor county treasurer.** No ~~A~~ percentage ~~must~~ *may not* be allowed to the treasurer on any money received by ~~him~~ from ~~his~~ *the treasurer’s* predecessor in office.”

**Section 480.** Section 7-6-2204, MCA, is amended to read:

**“7-6-2204. Cash verification by county clerk.** The county clerk and recorder, at the close of business each month, shall count the cash in the office of the county treasurer and shall retain a copy of the counting in ~~his~~ *the county clerk’s* office.”

**Section 481.** Section 7-6-2403, MCA, is amended to read:

**“7-6-2403. Qualifications of county auditor.** ~~No~~ A person is *not* eligible to serve in the office of county auditor of any county ~~who is not~~ *unless the person* is of voting age and ~~who~~ has ~~not~~ been a resident of the county for which ~~he~~ *the person* is elected or appointed for at least 2 years preceding ~~his~~ election or appointment.”

**Section 482.** Section 7-6-2405, MCA, is amended to read:

**“7-6-2405. Location of office.** The county auditor shall keep ~~his~~ *the auditor’s* principal office at the county seat of the county for which ~~he~~ *shall have been* elected or appointed.”

**Section 483.** Section 7-6-2406, MCA, is amended to read:

**“7-6-2406. Compensation of auditor.** The county auditor receives the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and ~~shall may not~~ receive ~~no~~ other compensation or emolument ~~whatsoever~~ for any service rendered or performed ~~by him~~, except actual expenses for living and traveling whenever the duties of ~~his~~ office require ~~his~~ *the auditor’s* presence at any place in the county other than the county seat, and then only after the travel has been ordered and advised by the board of county commissioners.”

**Section 484.** Section 7-6-2410, MCA, is amended to read:

**“7-6-2410. Maintenance of records.** The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in ~~his~~ *the auditor’s* office. Each county auditor, on ~~going out of~~ *leaving* office, shall deliver over to ~~his~~ *the* successor in office all documents, books, records, and property in ~~his hands~~ *the office* belonging to the county.”

**Section 485.** Section 7-6-2411, MCA, is amended to read:

**“7-6-2411. List of claims allowed or rejected.** The county clerk and recorder shall return to the county auditor, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected, either in whole or in part, by them. This list ~~shall~~ *must* be recorded by the auditor in a book kept for that purpose and carefully preserved in ~~his~~ *the auditor’s* office.”

**Section 486.** Section 7-6-2412, MCA, is amended to read:

**“7-6-2412. Other duties of auditor.** (1) Subject to the requirements of subsection (2), the county auditor shall ~~also~~ perform ~~such~~ other duties, clerical or otherwise, as ~~he may be~~ directed to ~~perform~~ by the county commissioners.

(2) A reasonable amount of time must be allowed the county auditor for the performance of the duties ~~definitely~~ set forth in this part.”

**Section 487.** Section 7-6-2424, MCA, is amended to read:

**“7-6-2424. Appeal of decision concerning claim.** (1) Whenever a claim against a county is disallowed in whole or in part or whenever ~~any a~~ taxpayer or resident of the county is not satisfied with ~~any an~~ allowance made by the board, the claimant, taxpayer, or resident may appeal from the decision of the board to the district court for the county. ~~by causing a~~ A written notice of appeal ~~to~~ *must*

be served on the clerk of the board within 30 days after the making of the decision or allowance, and ~~executing~~ a bond *must be executed* to the county, with surety to be approved by the clerk of the board, conditioned to prosecute the appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, ~~must shall~~ immediately give notice ~~thereof~~ to the county attorney and ~~must shall~~ make out a return of the proceedings in the matter before the board, with its decision ~~thereon on the matter~~, and file the ~~same return~~, together with the bond and all the papers ~~therein in the matter~~ in ~~his the clerk's~~ possession, with the clerk of the district court.

(3) The appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in ~~like the same manner~~.

**Section 488.** Section 7-6-2603, MCA, is amended to read:

**"7-6-2603. Registration of warrants.** (1) If the fund is insufficient to pay ~~any a~~ warrant, it must be registered and ~~thereafter~~ paid in the order of its registration.

(2) The county treasurer ~~must may~~ not register any county order or warrant in the name of any person other than the payee ~~thereof~~ except at the request of ~~such the~~ payee or ~~his the payee's~~ agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing."

**Section 489.** Section 7-6-2604, MCA, is amended to read:

**"7-6-2604. Interest on unpaid warrants.** (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the ~~same warrant~~ is not paid for ~~want~~ lack of funds, the treasurer ~~must shall~~ endorse ~~thereon on the warrant~~ "Not paid for ~~want~~ lack of funds", annexing ~~include~~ the date of presentation, and sign ~~his name thereto the warrant~~. When the treasurer pays ~~any a~~ warrant on which any interest is due, ~~he must the treasurer shall~~ note on the warrant the amount of interest paid ~~thereon~~ and enter on ~~his the treasurer's~~ account the amount of ~~such~~ interest, distinct from the principal.

(2) ~~From and after~~ After the date of presentation and endorsement by the treasurer, the warrant ~~shall must~~ bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and ~~by him~~ endorsed "Not paid for ~~want~~ lack of funds in the treasury", ~~from and after~~ the date of ~~such~~ presentation and endorsement, ~~shall must~~ draw interest at the rate fixed by the board of county commissioners in accordance with law."

**Section 490.** Section 7-6-2605, MCA, is amended to read:

**"7-6-2605. Call for payment of warrants drawing interest.** (1) When there is sufficient money to pay the warrants drawing interest, the treasurer ~~must shall~~ give notice as provided in 7-1-2121 that ~~he is ready to pay such the~~ warrants ~~are able to be paid~~.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer ~~must may~~ not publish the warrants in detail but ~~shall~~ give notice only that county warrants presented for payment prior to ~~such a~~ date, stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer ~~must shall~~ designate ~~such the~~ payable warrants in the advertisement.

(3) ~~Such~~ *The* warrants cease to draw interest from the first publication or posting of ~~such~~ *the* notice.

(4) (a) If ~~such~~ *the* warrants ~~be are~~ not re-presented for payment within 60 days from the time the notice ~~hereinbefore provided for~~ is given, the fund set aside for the payment of the ~~same~~ *warrants* must be applied by the treasurer to the payment of unpaid warrants ~~next~~ in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay ~~them~~ *the warrants* out of any money in the treasury *that is* not otherwise appropriated.”

**Section 491.** Section 7-6-2606, MCA, is amended to read:

**“7-6-2606. Order of redemption of warrants.** (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to ~~such~~ *the* warrants according to the priority of time in which they were presented. The time of presenting ~~such~~ *the* warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, ~~he must~~ *the treasurer shall* set apart the ~~same~~ *the money* or ~~so~~ as much ~~thereof~~ *of the money* as is necessary for the payment of ~~such~~ *the* warrants.”

**Section 492.** Section 7-6-2801, MCA, is amended to read:

**“7-6-2801. Management of school funds.** The county treasurer ~~must~~ *shall*:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts ~~which~~ *that* are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform ~~him~~ *the superintendent* of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever ~~such~~ *the* warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in ~~such~~ *a* form as is required by ~~him~~ *the superintendent*.”

**Section 493.** Section 7-6-4301, MCA, is amended to read:

**“7-6-4301. Presentation of claims against municipality.** (1) All accounts and demands against a city or town must be presented to the council, ~~duy~~ *in an itemized format*. These claims must be presented with all necessary and proper vouchers within 1 year from the date the ~~same~~ *claims* accrued. ~~No~~ *An* action may *not* be maintained against the city or town for or on account of any demand or claim against the city or town until ~~such~~ *the* demand or claim has first been presented to the council.

(2) Payment of claims against a city or town may be authorized by the council when:

(a) payee-signed claims have been issued to the city or town and the payee has attested in the claim to its accuracy and that ~~he~~ *the payee* has not received the claimed amount; or

(b) the payee has provided the city or town with an invoice or other document identifying the quantity and total cost ~~per~~ *for each* item included on the invoice.

(3) All bills, claims, accounts, or charges for materials of any kind that are purchased by and on behalf of a city or town by its department heads or officers must be reviewed by the city or town finance director or the city or town clerk before submission to the council.

(4) ~~Any~~ *A* claim or demand not ~~so~~ presented within the time provided in subsection (1) is forever barred, and the council has no authority to allow any account or demand not ~~so~~ presented *as provided in this section.*"

**Section 494.** Section 7-6-4304, MCA, is amended to read:

**"7-6-4304. Issuance of duplicate warrants and checks.** (1) A duplicate warrant or check may be issued by the appropriate municipal officer whenever an instrument drawn by ~~him~~ *the officer* upon the municipality is lost or destroyed. The duplicate warrant or check must be in the same form as the original except that it must have plainly printed across its face the word "duplicate". Except as provided in subsection (2), ~~no~~ *a* duplicate warrant or check may *not* be issued or delivered unless the person entitled to receive it deposits with the issuing municipal officer a bond in double the amount for which the duplicate warrant or check is issued, conditioned to hold the municipality and its officers harmless on account of the issuance of the duplicate warrant or check.

(2) ~~No~~ *A* bond of indemnity is *not* required when:

(a) the payee is the U.S. government, a state of the United States, an agency, instrumentality, or officer of the U.S. government or of a state, county, city, city and county, town, district, or other political subdivision of a state, or an officer ~~thereof~~ *of an enumerated entity*;

(b) the owner or custodian is the state of Montana or an agency or officer ~~thereof~~ *of the state*;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the U.S. government or by the state of Montana;

(d) the amount of the lost or destroyed warrant or check is less than \$100;

(e) it can be established that a crime has been committed, and as a result of ~~such~~ *the* crime, the warrant or check was stolen or destroyed;

(f) it can be established that the warrant or check was mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the municipality.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(e), (2)(f), or (2)(g), a stop-payment order must be placed on the original warrant or check by the municipality.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application must include an agreement to indemnify and hold harmless the municipality or its officers and employees from any loss resulting from the issuance of a duplicate warrant or check. Any loss incurred in connection with the issuance of a duplicate warrant or check must be charged against the account from which the payment was derived."

**Section 495.** Section 7-6-4502, MCA, is amended to read:



**“7-6-4502. Call for payment of warrants drawing interest.** (1) Except as provided in subsection (2), when there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the ~~same warrants~~, the city treasurer or town clerk ~~must shall~~:

(a) give notice in some newspaper published in ~~such the~~ city or town or, if ~~none a newspaper is not published therein in the city or town, then~~ by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that ~~he the treasurer or clerk~~ is ready to pay the warrants and giving the number of the warrants to be paid; and

(b) if the warrants are subject to purchase by the county for investment as provided in 7-6-2701, notify the county treasurer that any ~~such~~ warrants in the possession of the county will be paid upon presentation to the city treasurer or town clerk.

(2) If all of ~~such the~~ warrants are held by a county, only the notice provided for in subsection (1)(b) is required.

(3) The warrants ~~so~~ called cease to draw interest from the time of the first publication or posting of ~~such the~~ notice unless all of ~~such the~~ warrants are held by a county, in which case the warrants cease to draw interest from the time of notification of the county treasurer.”

**Section 496.** Section 7-6-4601, MCA, is amended to read:

**“7-6-4601. Deposit of public money.** ~~It shall be the duty of the~~ *The* city treasurer or town clerk, whichever is appropriate, ~~to shall~~ deposit all public money in ~~his the treasurer’s or clerk’s~~ possession and under ~~his the treasurer’s or clerk’s~~ control, except ~~such~~ as may be required for current business, *only* in any solvent bank or banks located in ~~such the~~ city or town and subject to national supervision or state examination, as the council shall designate, ~~and no other.~~”

**Section 497.** Section 7-6-4603, MCA, is amended to read:

**“7-6-4603. Investment of municipal money in city or town warrants.**

(1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and ~~which that~~, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council may direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town ~~thereafter~~ issued against funds in which there ~~is are~~ not sufficient funds to pay ~~such the~~ city or town warrants at the time of issuance.

(2) (a) ~~In case of such purchase~~ *If warrants are purchased*, the city or town council shall designate the fund or funds to be invested and shall fix the amount ~~thereof of investment~~ and shall also designate the city or town warrants ~~which that~~ are to be purchased by ~~such the~~ funds. The city or town clerk shall ~~thereupon~~ cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase ~~such the~~ warrant.

(b) The city treasurer or town clerk shall ~~thereafter~~, when ~~such the~~ city or town warrant is presented ~~to him~~, purchase the ~~same warrant~~ out of the proper fund as designated by the city or town council. The warrant ~~so~~ purchased ~~shall must~~ be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk.”

**Section 498.** Section 7-7-101, MCA, is amended to read:

**“7-7-101. Submission of local government general obligation bond proceedings to attorney general for review.** The governing body of any county, city, or town shall submit a certified copy of all proceedings preliminary to the issue of general obligation bonds to the attorney general, together with such other proceedings, certificates, and records as ~~he~~ *that the attorney general* may require, and request ~~his~~ *the attorney general’s* report as to validity.”

**Section 499.** Section 7-7-106, MCA, is amended to read:

**“7-7-106. Hearing and determination on challenge.** (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where ~~he~~ *the defendant* last resided.

(3) The court shall meet at the time and place designated to determine the contested election and ~~shall have~~ *has* all the powers necessary to the determination ~~thereof of the election.~~

(4) The court ~~shall be~~ *is* governed by the rules of law and evidence governing the determination of questions of law and fact so far as the ~~same~~ *rules* may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission ~~thereof~~, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment ~~in the premises~~, either confirming or annulling and setting aside the election. The judgment ~~shall~~ *must* be entered immediately ~~thereafter~~ *after the pronouncement.*”

**Section 500.** Section 7-7-2106, MCA, is amended to read:

**“7-7-2106. Procedure if original bond, warrant, or coupon is presented.** It is the duty of the ~~The~~ county treasurer, upon the production ~~to him~~ of any original bond, warrant, or coupon by the lawful owner or holder ~~thereof~~, ~~to shall~~ assign by endorsement and ~~to deliver to him~~ *the owner or holder* the surety bond mentioned in 7-7-2104. ~~Such~~ *The* owner or holder may maintain an action ~~in his own name~~ upon ~~such~~ *the* surety bond for the recovery of any money paid upon ~~such~~ *the* duplicate, but the delivery of ~~such~~ *the* surety bond does not relieve or exonerate the county from the payment of the amount specified ~~therein~~ *in the bond* upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the ~~same~~ *amount.*”

**Section 501.** Section 7-7-2225, MCA, is amended to read:

**“7-7-2225. Filing of petition with election administrator — certificate.** (1) The completed petition ~~shall~~ *for an election on issuing bonds must* be filed with the election administrator. The election administrator shall, within 15 days ~~thereafter~~, carefully examine the petition and the county records

showing the qualifications of the petitioners and attach a certificate, under his official signature and the seal of his *the administrator's* office.

(2) The certificate ~~shall~~ *must* set forth:

(a) the total number of individuals who are registered electors;

(b) which and how many of the individuals whose names are subscribed to the petition ~~possess~~ *have* all of the qualifications required of signers of ~~such~~ *a* petition;

(c) whether ~~such~~ *the* qualified signers constitute more or less than 20% of the registered electors of the county."

**Section 502.** Section 7-7-2226, MCA, is amended to read:

**"7-7-2226. Delivery of certified petition to board of county commissioners.** (1) After completing the certificate required by 7-7-2225, the election administrator shall deliver the certified petition to the board of county commissioners.

(2) When the petition has been filed with the election administrator and ~~he~~ *the administrator* has found that it has a sufficient number of signers qualified to sign it, ~~he~~ *the administrator* shall place ~~it~~ *the petition* before the board at its first meeting held after ~~he has attached his certificate thereto~~ *certification.*"

**Section 503.** Section 7-7-2258, MCA, is amended to read:

**"7-7-2258. Copy of bond to be kept by county treasurer.** The county clerk shall ~~also~~ deliver to the county treasurer an unsigned and canceled printed copy of a bond of each issue, as ~~so~~ issued and registered, to be preserved in ~~his~~ *the treasurer's* office."

**Section 504.** Section 7-7-2272, MCA, is amended to read:

**"7-7-2272. Cancellation of bonds and coupons.** (1) (a) All bonds and interest coupons paid by the county treasurer from time to time ~~shall~~ *must* be canceled by ~~him~~ *the treasurer*, and after ~~such~~ cancellation, ~~he~~ *the treasurer* shall deliver the ~~same~~ *bonds and coupons* to the county clerk, with a report showing the numbers of ~~such~~ bonds and the amounts paid as principal and interest ~~thereon~~. The county treasurer shall enter on the record of the registration of ~~such~~ *the* bonds the date of the payment of the ~~same~~ *bonds* and the ~~several~~ coupons attached ~~thereto~~ *to the bonds*.

(b) The county clerk shall exhibit ~~such~~ *the* bonds and coupons, with ~~such~~ *the* report, to the board of county commissioners at ~~the~~ *its* next regular meeting ~~thereof~~.

(2) (a) When any bonds have been or are purchased with any sinking and interest fund money under the provisions of 7-7-2270, ~~such~~ *the* bonds, with attached interest coupons, if not ~~then~~ in the possession of the county treasurer, ~~shall~~ *must* be immediately delivered to ~~him~~ *the treasurer*. ~~Such~~ *The* county treasurer shall at once endorse across the face of each ~~such~~ bond the word "Paid" and the date ~~thereof~~ and shall sign ~~such~~ *the* endorsement; ~~and~~ ~~such~~ *The* treasurer shall, without detaching the ~~same~~ *coupons*, cancel each interest coupon attached to ~~such~~ *the* bonds by endorsing across the face ~~thereof~~ *of the coupon* the word "Canceled" and the date ~~thereof~~ and shall sign ~~such~~ *the* endorsement. After making ~~such~~ *the* endorsements on ~~such~~ *the* bonds and coupons, the county treasurer shall enter on the record of registration ~~thereof~~ the date ~~such~~ *the* bonds and coupons were ~~so~~ endorsed by ~~him~~ as being paid and canceled, with the numbers and amounts ~~thereof~~ *of the bonds and coupons* and

the dates when the ~~same bonds and coupons~~ would have become due and payable if they had not been ~~so~~ purchased. The county treasurer shall then deliver ~~such the~~ bonds, with the canceled coupons attached, to the county clerk, with a report showing the numbers ~~thereof of the bonds~~ and amount paid on the purchase ~~thereof of the bonds~~.

(b) The county clerk shall exhibit ~~such the~~ bonds, with attached coupons and report, to the board at its next regular session.”

**Section 505.** Section 7-7-2405, MCA, is amended to read:

**“7-7-2405. Form of ballots.** There must be written or printed on the ballots the words “For the loan” and “Against the loan”, and in voting, the elector ~~must~~ *shall* vote for the proposition ~~he that the elector~~ prefers by making an X opposite the proposition.”

**Section 506.** Section 7-7-4103, MCA, is amended to read:

**“7-7-4103. General qualifications to vote on questions of municipal indebtedness.** (1) Registered electors of the city, town, or other municipal corporation may vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) ~~No An~~ elector, otherwise qualified, may *not* be denied the right to vote because the polling place for a general election for the precinct ~~wherein he in which the elector~~ resides and is entitled to vote lies within another city, town, or other municipal corporation.”

**Section 507.** Section 7-7-4224, MCA, is amended to read:

**“7-7-4224. Petition to request election.** (1) A petition asking that an election be held on the question of issuing bonds ~~shall must~~ be signed by not less than 20% of the qualified electors of the city or town. The petition ~~shall must~~ give the street and house number, if any, and the voting precinct of each person signing the ~~same petition~~.

(2) ~~Every Each~~ petition for the calling of an election to vote upon the question of issuing bonds ~~shall must~~ plainly and clearly state the purpose or purposes for which it is proposed to issue ~~such~~ bonds and ~~shall must~~ contain an estimate of the amount necessary to be issued for ~~such the~~ purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds to be issued ~~therefor~~, is separately stated in ~~such the~~ petition.

(3) ~~Such The~~ petition may consist of one sheet or of several sheets, identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the city or town clerk as ~~hereinafter~~ provided *in this part*.

(4) Only persons who are qualified to sign ~~such~~ petitions ~~shall be~~ *are* qualified to circulate the ~~same petitions~~, and there ~~shall must~~ be attached to the completed petition the affidavit of some person who circulated or assisted in circulating ~~such the~~ petition that ~~he the person~~ believes the signatures ~~thereon on the petition~~ are genuine and that the signers knew the contents ~~thereof of the petition~~ before signing the ~~same petition~~.”

**Section 508.** Section 7-7-4225, MCA, is amended to read:

**“7-7-4225. Presentation of petition to city or town clerk — clerk’s certificate.** (1) The completed petition ~~shall for an election on the bonds must~~ be

filed with the city or town clerk. The clerk shall, within 15 days thereafter, carefully examine the ~~same~~ *petition* and the county records showing the qualifications of the petitioners and attach ~~thereto to the petition~~ a certificate, under his official signature.

(2) The certificate ~~shall~~ *must* set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to ~~such~~ *the petition* ~~are possessed of~~ *have* all of the qualifications required of signers to ~~such~~ *the petition*;

(c) whether ~~such~~ *the* qualified signers constitute more or less than 20% of the registered electors of the city or town."

**Section 509.** Section 7-7-4256, MCA, is amended to read:

**"7-7-4256. Printing of bonds.** (1) Except as provided in subsection (2), the city or town clerk, under the direction of the council, shall cause the bonds, with coupons attached ~~thereto~~, to be printed or lithographed at the expense of the city or town at lowest commercial rates.

(2) A purchaser of ~~such~~ *the* bonds may furnish the ~~same~~ *bonds* to the city or town, in the form prescribed by the council, for execution, if ~~the same is done furnished at his the purchaser's own expense and without cost or expense to the city or town.~~"

**Section 510.** Section 7-7-4258, MCA, is amended to read:

**"7-7-4258. Copy of bond to be kept by city treasurer or town clerk.** The city or town clerk shall also deliver to the city treasurer ~~or town clerk~~ an unsigned and canceled printed copy of one of the bonds, as ~~so~~ issued and registered, to be preserved in ~~his~~ *the treasurer's* office."

**Section 511.** Section 7-7-4261, MCA, is amended to read:

**"7-7-4261. Maintenance of accounts for bond issues.** (1) The city treasurer or town clerk shall keep in ~~his~~ *the treasurer's or clerk's* books a special and separate sinking fund account for each issue or series of outstanding bonds, including citizen bonds as provided in 7-7-4211 through 7-7-4214, issued by ~~his~~ *the* city or town. Each ~~such~~ fund must at all times show the exact condition ~~thereof of the fund.~~

(2) All taxes collected for interest and principal on city or town bonds ~~shall~~ *must* be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund ~~shall~~ *must* be administered as provided in 7-7-123, 7-7-124, and 7-7-4270."

**Section 512.** Section 7-7-4272, MCA, is amended to read:

**"7-7-4272. Cancellation of bonds and coupons.** (1) All bonds and interest coupons paid by the city treasurer or town clerk from time to time ~~shall~~ *must* be canceled by ~~him~~ *the treasurer or clerk*, and ~~after such~~ *After* cancellation, ~~he~~ *the treasurer or clerk* shall deliver the ~~same~~ *bonds and coupons* to the city or town clerk, with a report showing the numbers of ~~such~~ *the* bonds and the amounts paid as principal and interest ~~thereon~~. The city treasurer or town clerk shall enter on the records of the registration of ~~such~~ *the* bonds the date of the payment of the ~~same~~ *bonds* and the ~~several~~ coupons attached ~~thereto to the bonds.~~

(2) The city or town clerk shall exhibit ~~such~~ *the* bonds and coupons, with ~~such the~~ report, to the city or town council at ~~the~~ *its* next regular meeting thereof.”

**Section 513.** Section 7-7-4629, MCA, is amended to read:

**“7-7-4629. Management of enterprise.** (1) In order that the payment of the refunding bonds and interest ~~thereon shall be~~ *on the bonds is* adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees ~~thereof are hereby directed and it of the municipality shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:~~

(a) ~~to~~ operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect ~~such~~ fees, tolls, rentals, rates, and other charges in connection ~~therewith~~ *with the enterprise* as may be necessary or proper, ~~which fees, tolls, rates, rentals, and other charges shall be at least in an amount that is~~ sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates:

(i) to pay all current expenses of operation, maintenance, and repair of ~~such~~ *the* enterprise;

(ii) to pay the interest on and principal of the refunding bonds as the ~~same shall become~~ *principal becomes* due and payable;

(iii) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and

(iv) to meet any other obligations of the municipality ~~which that~~ are charges, liens, or encumbrances upon the ~~revenues~~ *revenue* of ~~such the~~ enterprise;

(b) ~~to~~ operate, maintain, preserve, and keep or cause to be operated, maintained, preserved, and kept the enterprise and every part ~~and parcel thereof of the enterprise~~ in good repair, working order, and condition;

(c) ~~to~~ pay and discharge or cause to be paid or discharged any ~~and all~~ lawful claims for labor, materials, and supplies ~~which that~~, if unpaid, might by law become a lien or charge upon the ~~revenues~~ *revenue* or ~~any part thereof~~ prior or superior to the lien of the refunding bonds or ~~which that~~ might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds ~~shall be~~ *are* fully preserved and protected;

(d) ~~to~~ keep proper books of record and accounts of the enterprise, (separate from all other records and accounts), in which complete and correct entries ~~shall must~~ be made of all transactions relating to the enterprise or ~~any part thereof~~ and ~~which that~~, together with all other books and papers of the municipality, ~~shall must~~ at all times be subject to the inspection of the ~~holder or~~ holders of not less than 10% of the refunding bonds then outstanding or ~~his or their~~ *the holders'* representatives ~~duly~~ authorized in writing.

(2) ~~None of the foregoing~~ *The* duties ~~shall in subsection (1) may not~~ be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than ~~revenues~~ *revenue* received or receivable from the enterprise.”

**Section 514.** Section 7-7-4631, MCA, is amended to read:

**“7-7-4631. Role of receiver.** (1) The receiver appointed pursuant to 7-7-4630 shall ~~forthwith~~, directly or by ~~his~~ *the receiver’s* agents and attorneys, enter into and upon and take possession of the enterprise and ~~each and every part thereof of the enterprise~~ and may exclude the municipality, its governing body, officers, agents, and employees, and all persons claiming under them wholly ~~therefrom from the enterprise~~ and shall ~~must~~ have, and shall hold, use, operate, manage, and control the ~~same~~ *enterprise* and ~~each and every part thereof of the enterprise~~ and, in the name of the municipality or otherwise as the receiver may ~~deem~~ *consider* best, shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do.

(2) ~~Such~~ *The* receiver shall:

(a) maintain, restore, insure, and keep insured the enterprise and from time to time make all ~~such~~ necessary or proper repairs as may seem expedient to ~~such~~ *the* receiver;

(b) establish, levy, maintain, and collect ~~such~~ fees, tolls, rentals, and other charges in connection with the enterprise ~~as such that the receiver may deem~~ *considers* necessary or proper and reasonable; and

(c) collect and ~~must~~ receive all ~~revenues~~ *revenue* and deposit the ~~same~~ *revenue* in a separate account and apply ~~such revenues so collected and received~~ *revenue* in ~~such a manner as that~~ the court shall direct.

(3) ~~Such~~ *The* receiver shall, in the performance of the powers conferred upon ~~him~~ *the receiver*, act under the direction and supervision of the court making ~~such~~ *the* appointment and shall ~~must~~ at all times be subject to the orders and decrees of ~~such~~ *the* court and may be removed ~~thereby by the court~~. ~~Nothing herein contained shall~~ *This section does not* limit or restrict the jurisdiction of ~~such~~ *the* court to enter ~~such~~ other and further orders and decrees ~~as such that the court may deem~~ *considers* necessary or appropriate for the exercise by the receiver of any functions specifically set forth ~~herein in this section.~~

**Section 515.** Section 7-7-4633, MCA, is amended to read:

**“7-7-4633. Remedies of holders of refunding revenue bonds.** (1) Subject to any contractual limitations binding upon the holders of ~~any~~ *an* issue of refunding bonds or trustee ~~therefor for the holders~~, including but not limited to the restriction of the exercise of ~~any~~ *a* remedy to the specified proportion of percentage of ~~such~~ *the* holders, ~~any~~ *a* holder of refunding bonds or trustee ~~therefor for the holder shall have~~ *has* the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) by mandamus or other suit, action, or proceeding at law or in equity, to enforce ~~his~~ *the holder’s* rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel ~~such~~ *the* municipality or ~~such~~ *the* governing body or any ~~such~~ officers, agents, or employees to perform and carry out ~~its and their~~ duties and obligations under this part and ~~its and their~~ covenants and agreements with bondholders;

(b) by action or suit in equity, to require the municipality and the governing body ~~thereof~~ to account as if they were the trustee of an express trust;

(c) by action or suit in equity, to enjoin any acts or things ~~which~~ *that* may be unlawful or in violation of the rights of the bondholders;

(d) to bring suit upon the refunding bonds.

(2) (a) ~~No~~ *A* remedy conferred by this part upon ~~any~~ *a* holder of refunding bonds or ~~any~~ *a* trustee ~~therefor for the holder~~ is ~~not~~ intended to be exclusive of

any other remedy, but each ~~such~~ remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part or by any other law.

(b) ~~No~~ A waiver of any default or breach of duty or contract, whether by ~~any a~~ holder of refunding bonds or ~~any a~~ trustee ~~therefor for a holder~~, ~~shall does not~~ extend to or ~~shall~~ affect any subsequent default or breach of duty or contract or ~~shall~~ impair any rights or remedies ~~thereon on the breach or contract~~. ~~No~~ A delay or omission of ~~any a~~ bondholder or ~~any a~~ trustee ~~therefor for a holder~~ to exercise any right or power accruing upon any default ~~shall may not~~ impair any ~~such~~ right or power or ~~shall~~ be construed to be a waiver of any ~~such~~ default or acquiescence ~~therein in the default~~.

(c) Every substantive right and every remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as ~~may be deemed considered~~ expedient.

(3) In case any suit, action, or proceeding to enforce any right or exercise any remedy ~~shall must~~ be brought or taken and then discontinued or abandoned or ~~shall must~~ be determined adversely to the holder of the refunding bonds or ~~any a~~ trustee ~~therefor for the holder~~, then and in ~~every such each~~ case the municipality and ~~such the~~ holder or trustee ~~shall must~~ be restored to their former positions and rights and remedies as if ~~no such the~~ suit, action, or proceeding had ~~not~~ been brought or taken.”

**Section 516.** Section 7-8-2304, MCA, is amended to read:

**“7-8-2304. Terms for sale of tax-deed land.** (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate of major New York banks, as published in the Wall Street Journal within 7 days prior to the date of sale.

(b) If a sale is made on terms, the ~~chairman~~ *presiding officer* of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue.”

**Section 517.** Section 7-8-2305, MCA, is amended to read:

**“7-8-2305. Deed of conveyance — reservation of mineral royalty.** (1) Subject to the provisions of subsection (2), upon payment of the purchase price in full, together with all interest ~~which that~~ may become due on any installment or deferred payments, the ~~chairman~~ *presiding officer* of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser or ~~his the purchaser’s~~ assigns or ~~such~~ other instruments ~~as shall be that are~~ sufficient to convey all of the title of the county in and to the property ~~so~~ sold.

(2) The county may in the discretion of the board reserve not to exceed 6 1/4% royalty interest in the oil, gas, other hydrocarbons, and minerals produced ~~and saved from said the~~ land.”

**Section 518.** Section 7-8-2307, MCA, is amended to read:



**“7-8-2307. Tax liability of purchased tax-deed lands.** (1) On January 1 following the execution of ~~such a~~ contract or deed, the land ~~shall be~~ *is* subject to taxation in the name of the purchaser or ~~his~~ *the purchaser's* assignee.

(2) ~~In the event~~ *If* the taxes are not paid and ~~the same~~ become delinquent, ~~said the~~ contract ~~shall be~~ *is* subject to cancellation and all payments ~~theretofore~~ made ~~shall must~~ be ~~taken, treated, and~~ regarded as rent for ~~said the~~ property.”

**Section 519.** Section 7-8-2701, MCA, is amended to read:

**“7-8-2701. State policy for resource management.** It is hereby declared ~~to be~~ the policy of the state of Montana:

(1) to promote the conservation of the natural resources of the state;

(2) to provide for the conservation, protection, and development of forage plants and for the beneficial ~~utilization thereof~~ *use of forage plants* for grazing by livestock, under ~~such~~ regulations ~~as~~ *that* may be considered necessary;

(3) to put into crop production only ~~such~~ *properly fitted* lands ~~as are properly fitted~~ therefor;

(4) to encourage the storage and conservation of water for livestock and irrigation;

(5) to place the farming and livestock industries upon a permanent and solid foundation;

(6) to extend preference in sales and leases of lands to resident farmers, ~~stockmen~~ *stockgrowers*, and taxpayers; *and*

(7) to gradually restore to private ownership the immense areas of lands ~~which~~ *that* have passed into county ownership because of tax delinquencies.”

**Section 520.** Section 7-8-2707, MCA, is amended to read:

**“7-8-2707. Organization of board — conduct of business.** (1) The board shall, ~~from its membership,~~ select a ~~chairman~~ *presiding officer from its members*. The county clerk ~~shall be~~ *is* the clerk of ~~said the~~ board.

(2) The board shall hold regular meetings on the first Wednesday following the first Monday of each month and may hold meetings whenever ~~deemed~~ *considered* necessary upon a call of the ~~chairman~~ *presiding officer* or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board may adopt ~~whatever~~ *rules it deems* *considers* proper for the conduct of its meetings.

(3) The county clerk, as clerk of the advisory board, shall keep the minutes of all meetings thereof and ~~be~~ *is* custodian of all its records. ~~It shall be the duty of~~ *The board shall* keep a record of the minutes of all meetings thereof in a suitable book, provided by the board of county commissioners for that purpose, and ~~to~~ preserve all important documents, maps, plats, and papers.”

**Section 521.** Section 7-11-204, MCA, is amended to read:

**“7-11-204. Authorization for establishment of interlocal cooperation commissions.** An interlocal cooperation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal cooperation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities, and towns having any jurisdiction in the county under consideration. A certified copy of ~~such the~~ resolution or certified copies of ~~such the~~ concurring resolutions ~~shall must~~ be transmitted to the clerk

and recorder of the county, and an interlocal cooperation commission ~~shall~~ *must* be ~~deemed considered~~ to be authorized.

(2) (a) A petition requesting the establishment of an interlocal cooperation commission ~~shall~~ *must* be signed by at least 10% of the qualified voters within the county registered for the preceding general election and ~~shall~~ *must* be filed with the clerk and recorder of the county.

(b) Upon receipt of ~~such~~ a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures ~~thereon~~. Within 30 days following receipt of ~~such~~ *the* petition, the clerk and recorder shall transmit the ~~same~~ *petition* to the board of county commissioners and to the governing bodies of all cities and towns having any jurisdiction in the county, together with ~~his~~ *the clerk and recorder's* certificate as to the sufficiency ~~thereof of the petition~~, and an interlocal cooperation commission ~~shall~~ *must* be ~~deemed considered~~ to be authorized.”

**Section 522.** Section 7-11-207, MCA, is amended to read:

**“7-11-207. Composition of commission.** ~~Any~~ *An* interlocal cooperation commission established pursuant to this part ~~shall consist~~ *consists* of members to be selected as follows:

(1) four members selected by the county commissioners;

(2) four members appointed by the mayor of the principal city and confirmed by the governing body of the city;

(3) one member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town;

(4) one member, who ~~shall~~ *must* be ~~chairman~~ *presiding officer* of the interlocal cooperation commission, selected by the other members of the commission at their initial meeting.”

**Section 523.** Section 7-11-208, MCA, is amended to read:

**“7-11-208. Qualifications of members of commission.** (1) Each member shall reside, at the time of ~~his~~ appointment, within the county if selected by the board of county commissioners or within the city or town by which appointed.

(2) ~~No~~ *A* member ~~shall~~ *may not* be an official or employee of any unit of local government.”

**Section 524.** Section 7-11-210, MCA, is amended to read:

**“7-11-210. Vacancies.** In case of a vacancy for any cause, a new member ~~shall~~ *must* be appointed in the same manner as the member ~~he~~ *replaces* ~~being replaced~~.”

**Section 525.** Section 7-11-212, MCA, is amended to read:

**“7-11-212. Organization of commission — meetings.** (1) Not later than 80 days after the commission is authorized, the members of the commission shall meet and organize at a time ~~which shall~~ *that must* be set by the board of county commissioners.

(2) At the first meeting of the commission, one of the members appointed by the board of county commissioners ~~shall~~ *must* be designated by that body to serve as temporary ~~chairman~~ *presiding officer*. As its first official act, the commission shall select a ~~chairman~~ *presiding officer* from outside its own membership.

(3) Further meetings of the commission shall *must* be held upon a call of the ~~chairman presiding officer~~, the ~~vice-chairman vice presiding officer~~ in the absence or inability of the ~~chairman presiding officer~~, or a majority of the members of the commission.”

**Section 526.** Section 7-11-227, MCA, is amended to read:

**“7-11-227. Furnishing of information to commission.** Upon request of the ~~chairman presiding officer~~ of the commission, all state agencies, all counties and other units of local government, and the officers and employees ~~thereof~~ of *those entities* shall furnish the commission ~~such~~ *with* information ~~as that~~ may be necessary for carrying out its functions and ~~which that~~ may be available to or procurable by ~~such~~ *the* agencies or units of government.”

**Section 527.** Section 7-12-1103, MCA, is amended to read:

**“7-12-1103. Definitions.** As used in this part, the following definitions apply:

(1) “Appointing authority” means the mayor in the case of a municipality, the board of county commissioners in the case of a county, or the chief executive of a consolidated city-county government.

(2) “Board” means the board of trustees created in 7-12-1121.

(3) “Business” means all types of business, including professions.

(4) “District” means a business improvement district created under this part.

(5) “Governing body” means the legislative body of a local government.

(6) “Local government” means a municipality, a county, or a consolidated city-county government.

(7) “Owner” means a person in whom appears the legal title to real property by deed ~~duy~~ recorded in the county records or a person in possession of real property under claim of ownership for ~~himself~~ *the person* or as the personal representative, agent, or guardian of the owner.”

**Section 528.** Section 7-12-1121, MCA, is amended to read:

**“7-12-1121. Board of trustees — appointment — number — term of office.** (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property within the district to ~~comprise~~ *compose* the board of trustees of the district.

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of ~~his~~ *the member's* appointed term.

(3) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(4) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the

unexpired term. A member shall hold office until his *a* successor has been appointed and qualified.”

**Section 529.** Section 7-12-1122, MCA, is amended to read:

**“7-12-1122. Organization of board of trustees — no compensation.** (1) The appointing authority shall designate which member of the board is to be the first ~~chairman~~ *presiding officer*. When the office of ~~chairman~~ *presiding officer* of the board becomes vacant thereafter, the board shall elect a ~~chairman~~ *presiding officer* from among its members. The term of office as ~~chairman~~ *presiding officer* of the board, unless otherwise prescribed by the governing body, must be for 1 calendar year or for that portion ~~thereof of a year~~ remaining after each ~~chairman~~ *presiding officer* is designated or elected.

(2) Members may *not* receive ~~no~~ compensation.”

**Section 530.** Section 7-12-2101, MCA, is amended to read:

**“7-12-2101. Definitions.** (1) The word “blocks”, ~~shall mean such means~~ blocks, whether regular or irregular, ~~as that~~ are bounded by main streets or partially by a boundary line of the city.

(2) The term “board of county commissioners” includes any body or board ~~which that~~ under the law is the legislative department of the government of the county.

(3) The word “city” and the word “municipality”, as used in this part, ~~shall be understood and so construed as to include~~ *include* all corporations ~~heretofore organized and now existing and hereafter~~ organized for municipal purposes.

(4) The terms “clerk” and “county clerk”, as used in this part, include any person or officer who ~~shall be~~ *is* clerk of the board of county commissioners.

(5) The term “county treasurer”, as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

(6) The term “engineer”, as used in this part, means the person, firm, or corporation ~~who is~~ designated by the board of county commissioners as the engineer for the improvement.

(7) The term “incidental expenses”, as used in this part, includes:

(a) the compensation of the engineer for work done ~~by him~~;

(b) the cost of printing and advertising, as provided in this part;

(c) interest on warrants of the county issued to pay costs of improvements, as provided in this part;

(d) costs of issuance of the bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, ~~attorneys’~~ *attorney* fees and financial consultants’ fees, a premium for bond insurance, any price paid by the original purchaser of the bonds that is less than the face amount ~~thereof of the bonds~~, and interest to accrue on bonds or warrants of the special improvement district before assessments levied by the district are collected in amounts and at times sufficient to pay ~~such the~~ interest; and

(e) a reasonable administrative fee payable to the county for the creation and administration of the district by the county, its officers, and its employees.

(8) The term “main street” means ~~such an~~ actually opened street or streets as bound a block.

(9) The words “paved” or “repaved”, as used in this part, ~~shall be held to~~ mean and include pavement of stone, whether paving blocks or macadam; of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, ~~which that~~ the board of county commissioners by rule or resolution shall adopt.

(10) The term “quarter block”, as used in this part ~~as in reference~~ to irregular blocks, includes all lots or portions of lots having ~~any~~ frontage on either intersecting street halfway from ~~such the~~ intersection to the next main street or, when ~~no a~~ main street ~~intervenes does not intervene~~, all the way to the boundary line of ~~any the~~ city.

(11) The word “street”, as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places ~~which that~~ have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years ~~next preceding~~.

(12) The term “street intersection”, ~~wherever as~~ used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets, ~~which that~~ lies between lines drawn from corner to corner of all lot lines immediately cornering at ~~such the~~ juncture.

(13) The words “work”, “improved”, and “improvements”, as used in this part, ~~shall include~~ *include* all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of ~~all or~~ any portion of ~~said the~~ work.”

**Section 531.** Section 7-12-2117, MCA, is amended to read:

**“7-12-2117. Record of expenses to be kept by engineer.** ~~It shall be the duty of the~~ *The* engineer selected as ~~hereinbefore~~ provided ~~to in this part~~ shall keep an account in ~~his the~~ *the engineer’s* office of all costs and expenses incurred in connection with ~~every each~~ special improvement district and ~~to shall~~ certify the ~~same costs and expenses~~ to the county clerk.”

**Section 532.** Section 7-12-2122, MCA, is amended to read:

**“7-12-2122. Term of office of multicounty district trustee.** (1) The trustees appointed upon the creation of ~~such a~~ district shall serve staggered terms of 1, 2, and 3 years. ~~Thereafter~~ *After the initial appointments*, each trustee serves a term of 3 years.

(2) A trustee holds office for the term of ~~his~~ appointment or until ~~his a~~ successor is appointed and qualified.”

**Section 533.** Section 7-12-2135, MCA, is amended to read:

**“7-12-2135. Decision on award of contract.** (1) The board of county commissioners may award the contract for ~~such the~~ work or improvement to the lowest responsible bidder at the prices named in ~~his the~~ bid and shall reject all proposals other than the lowest regular proposal or bid of ~~any a~~ responsible bidder.

(2) The board:

(a) may reject any ~~and all~~ proposals or bids ~~should if it deem~~ *considers* this for the public good;

(b) may also reject the bid of ~~any a~~ party who has been delinquent or unfaithful in ~~any a~~ former contract with the board.”

**Section 534.** Section 7-12-2137, MCA, is amended to read:

**“7-12-2137. Procedure for dealing with bid securities.** (1) If bids are rejected, the board of county commissioners shall ~~thereupon~~ return to the proper parties the bid securities accompanying the *rejected* bids ~~so rejected~~.

(2) The bid security accompanying ~~said the~~ accepted proposal or bid ~~shall~~ *must* be held by the county clerk until the contract for doing ~~said the~~ work, ~~as hereinafter provided~~, has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, ~~whereupon said at which time the bid security shall~~ *must* be returned to ~~said the~~ bidder.

(3) If ~~said the~~ bidder fails, neglects, or refuses to enter into the contract to perform ~~said the~~ work and improvements ~~as hereinafter provided~~, then the bid security accompanying ~~his the~~ bid, ~~in the amount therein mentioned, shall~~ *must* be declared to be forfeited to the board and ~~shall~~ *must* be collected by ~~it the~~ board and paid into the general fund of the county.”

**Section 535.** Section 7-12-2139, MCA, is amended to read:

**“7-12-2139. Procedure if person entering contract defaults on work.**

(1) If the contractor who may have taken ~~any a~~ contract does not complete the ~~same contract~~ within the time limited in the contract or within ~~such a~~ further time as ~~that~~ may be given ~~him~~, the engineer selected as ~~hereinbefore provided in this part~~ shall report ~~such the~~ delinquency to the board of county commissioners.

(2) (a) The board may relet the unfinished portion of ~~said the~~ work after pursuing the formalities prescribed in 7-12-2131 through 7-12-2137 for the letting of the ~~whole contract~~ in the first instance.

(b) The board ~~shall have the right, in its option, to~~ *may* complete the contract and deduct any cost in excess of the contract price ~~thereof~~ from any money, bond, or warrant due ~~such the~~ contractor. ~~In the event~~ *If* there is no money, bond, or warrant due ~~such the~~ contractor from which to deduct ~~such the~~ cost, then the board ~~shall have the right to~~ *may* sue ~~such the~~ contractor and recover ~~from him~~ *the* costs.”

**Section 536.** Section 7-12-2140, MCA, is amended to read:

**“7-12-2140. Procedure for objection to proceedings.** (1) At any time within 60 days from the date of the awarding of a contract, any owner or other person having ~~any a~~ interest in any lot, tract, or plot of land liable to assessment who claims that any of the previous acts or proceedings relating to ~~said the~~ improvements are irregular, defective, erroneous, or faulty or that ~~his the~~ property will be damaged by the making ~~of~~ any of the improvements in the manner contemplated may file with the county clerk a written notice specifying in what respect ~~said the~~ acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent ~~his the~~ property will be damaged by the making ~~of~~ ~~said the~~ improvements.

(2) ~~Said The~~ notice ~~shall~~ *must* state that it is made in pursuance of this section.

(3) All objections in any act or proceeding or in relation to the making ~~of~~ ~~said the~~ improvements must be made in writing and in the manner and at the time ~~aforsaid provided in subsection (1)~~. All claims for damages ~~therefor shall~~ *must* be waived by ~~such the~~ property owner ~~in case no if a~~ written objection is ~~not~~ filed by ~~him~~, ~~provided that if~~ notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this part.”

**Section 537.** Section 7-12-2154, MCA, is amended to read:

**“7-12-2154. Payment of damages incurred as a result of improvements.** Whenever the owner or anyone interested in ~~any~~ property situated in the special improvement district, after filing with the county clerk a written notice claiming that ~~his~~ *the person’s* property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of ~~any~~ *an* improvement in the special improvement district:

(1) *and* before the resolution levying the assessment to defray the cost of making the improvement in the district is passed and adopted by the board of county commissioners, the amount ordered to be recovered ~~shall~~ *must* be added to and constitute a part of making the improvements; ~~but~~

(2) *However*, if the resolution levying the assessment to defray the cost and expenses of making the improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in the district for the purpose of paying the amount awarded, and the supplemental resolution ~~shall~~ *must* be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvements.”

**Section 538.** Section 7-12-2158, MCA, is amended to read:

**“7-12-2158. Resolution for levy and assessment of tax.** (1) To defray the cost of making or acquiring improvements in ~~any~~ *a* special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all benefited property in the district created for ~~such~~ *that* purpose; by using for a basis for ~~such~~ assessment the method or methods provided for by this part and described in the resolution of intention.

(2) ~~Such~~ *The* resolution ~~shall~~ *must* contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the ~~same~~ ~~shall~~ ~~become~~ *payment becomes* delinquent.

(3) ~~Such~~ *The* resolution, signed by the ~~chairman~~ *presiding officer* of the board, ~~shall~~ *must* be kept on file in the office of the county clerk.”

**Section 539.** Section 7-12-2163, MCA, is amended to read:

**“7-12-2163. Collection of district assessments by county treasurer — delinquencies.** (1) ~~Where~~ ~~any~~ *When* a resolution of assessment, either for construction or maintenance, has been ~~duly~~ certified by the county clerk, ~~it~~ ~~shall~~ ~~be~~ ~~the~~ ~~duty~~ ~~of~~ ~~the~~ ~~county~~ ~~treasurer~~ ~~shall~~, in accordance with the provisions of this title, ~~to~~ collect ~~such~~ *the* assessment in the same manner and at the same time as taxes for general and municipal purposes are collected ~~by~~ ~~him~~.

(2) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of county commissioners and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.”

**Section 540.** Section 7-12-2164, MCA, is amended to read:

**“7-12-2164. Payment of tax under protest — action to recover.** (1) When ~~any~~ *a* tax levied and assessed under any of the provisions of this part is

deemed *considered* unlawful by the party whose property is ~~thus~~ taxed or from whom ~~such the~~ tax is demanded, ~~such the~~ person may pay ~~such the~~ tax or any part thereof ~~deemed of the tax considered~~ unlawful under protest to the county treasurer.

(2) ~~Thereupon, such~~ The party ~~so~~ paying *under protest* or ~~his the party's~~ legal representative may bring an action in any court of competent jurisdiction against the officer to whom ~~such the~~ tax was paid or against the county in whose behalf the ~~same~~ tax was collected to recover ~~such the~~ tax or any portion thereof ~~so of the tax~~ paid under protest. ~~Any~~ An action instituted to recover ~~such the~~ tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax ~~so~~ paid under protest ~~shall~~ *must* be held by the county treasurer until the determination of ~~any an~~ action brought for the recovery thereof ~~of the tax.~~

**Section 541.** Section 7-12-4101, MCA, is amended to read:

**“7-12-4101. Definitions.** Unless the context indicates otherwise, as used in ~~this part and part 42 and this part~~, the following definitions apply:

(1) “Blocks” means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) “City” or “municipality” means all corporations organized for municipal purposes.

(3) “City clerk” or “clerk” means ~~any a~~ person or officer who is clerk of the council.

(4) “City council” means ~~any a~~ body or board that is the legislative department of the government of the city.

(5) “City engineer” means ~~any a~~ person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) “City treasurer” means ~~any a~~ person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) “Incidental expenses” means:

(a) the compensation of the city engineer for work done ~~by him~~;

(b) the cost of printing and advertising as provided in ~~this part and part 42 and this part~~;

(c) the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part;

(d) the expenses of making the assessment for any work authorized by this part;

(e) interest on warrants of the city issued to pay costs of improvements;

(f) costs of issuance of bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, ~~attorneys' attorney~~ fees and financial consultants' fees, a premium for bond insurance, and ~~any the~~ price paid by the original purchaser of the bonds that is less than the face amount ~~thereof of the bonds~~;

(g) interest to accrue on bonds or warrants of the special improvement district before assessments levied in the district are collected in amounts and at times sufficient to pay ~~such the~~ interest; and



(h) a reasonable administrative fee payable to the city for the creation and administration of the district by the city, its officers, and *its* employees.

(8) "Main street" means ~~such~~ *the* actually opened street as *that* bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) ~~which~~ *that* the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having ~~any~~ frontage on either of two intersecting streets halfway from the intersection to the next main street or, when ~~no~~ *a* main street ~~intervenes~~ *does not intervene*, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places ~~which~~ *that* have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets ~~which~~ *that* lies between lines drawn from corner to corner of all lot lines immediately cornering at ~~such~~ *the* juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in ~~this part and part 42 and this part~~ and also the construction, reconstruction, and repair of ~~all or~~ any portion of *the* work."

**Section 542.** Section 7-12-4121, MCA, is amended to read:

**"7-12-4121. Record of expenses to be kept by city engineer.** ~~It shall be the duty of the~~ *The* city engineer ~~to~~ *shall* keep an account of all costs and expenses incurred in ~~his~~ *the* engineer's office in connection with ~~every~~ *each* special improvement district and certify the ~~same~~ *costs and expenses* to the city clerk."

**Section 543.** Section 7-12-4143, MCA, is amended to read:

**"7-12-4143. Decision on award of contract.** (1) The city council may award the contract for ~~said~~ *the* work or improvement to the lowest responsible bidder at the prices named in ~~his~~ *the* bid and shall reject all proposals or bids other than the lowest regular proposal or bid of ~~any~~ *a* responsible bidder.

(2) The council may reject any ~~and all~~ proposals or bids ~~should if it deem~~ *considers* this for the public good and may also reject the bid of ~~any~~ *a* party who has been delinquent or unfaithful in ~~any~~ *a* former contract with the municipality."

**Section 544.** Section 7-12-4145, MCA, is amended to read:

**"7-12-4145. Procedure for dealing with bid securities.** (1) If bids are rejected, the city council shall ~~thereupon~~ return to the proper parties the bid securities corresponding to the ~~rejected~~ *rejected* bids ~~so~~ *rejected*.

(2) The bid securities accompanying ~~such~~ *the* accepted proposals or bids ~~shall~~ *must* be held by the city clerk of ~~said~~ *the* city until the contract for doing ~~said~~ *the* work, ~~as hereinafter provided~~, has been entered into, either by ~~said~~ *the* lowest bidder or by the owners of over 75% of the frontage, ~~whereupon~~ *said* ~~at which time~~ *the* bid security ~~shall~~ *must* be returned to ~~said~~ *the* bidder.

(3) If ~~said~~ *the* bidder fails, neglects, or refuses to enter into the contract to perform ~~said~~ *the* work or improvements ~~as hereinafter provided~~, then the bid

securities accompanying his *the* bid and the amount therein mentioned shall *must* be declared to be forfeited to ~~said the city and shall~~ *must* be collected by it *the city* and paid into the general fund.”

**Section 545.** Section 7-12-4148, MCA, is amended to read:

**“7-12-4148. Contract with successful bidder.** ~~Should~~ *If* the owners referred to in 7-12-4147 fail to elect to take ~~said the~~ work, to enter into a written contract ~~therefor for the work~~ within 3 days, or to commence the work within 15 days after the date of ~~such the~~ written contract and to prosecute the ~~same~~ contract with diligence to completion, ~~it shall be the duty of the city council to~~ *shall* enter into a contract with the original bidder to whom the contract was awarded at the prices specified in ~~his the~~ bid.”

**Section 546.** Section 7-12-4152, MCA, is amended to read:

**“7-12-4152. Procedure if person entering contract defaults on work.**

(1) If the contractor or owner who may have taken ~~any a~~ contract does not complete the ~~same~~ contract within the time limited in the contract or within ~~such a~~ further time ~~as that~~ the city council may give ~~him~~, the city engineer shall report ~~such the~~ delinquency to the council.

(2) (a) The council may relet the unfinished portion of ~~said the~~ work after pursuing the formalities prescribed in 7-12-4141 through 7-12-4145 for the letting of the ~~whole~~ contract in the first instance.

(b) The city ~~shall have the right~~ *may*, at its option, ~~to~~ complete the contract and deduct any cost in excess of the contract price ~~thereof~~ from any money, bonds, or warrants due ~~such the~~ contractor or owners. ~~In the event~~ *If* there is no money, bonds, or warrants due ~~such the~~ contractor or owners from which to deduct ~~such the~~ cost, then the city ~~shall have the right to~~ *may* sue ~~such the~~ contractor or owners and recover ~~from him~~ ~~such the~~ cost.”

**Section 547.** Section 7-12-4167, MCA, is amended to read:

**“7-12-4167. Provision for grading street by owner of abutting property.** (1) ~~It shall be lawful for the~~ *The* owner or owners of the lots or land fronting upon ~~any a~~ street, the width and grade of which ~~shall have~~ *have* been established by the city council or commission, ~~to~~ *may*, ~~after obtaining permission from the city council or commission, perform, at his or their own the owner's expense (after obtaining permission from the council or commission to do so but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said the street, to its full width or to the centerline thereof of the street and to its established grade, as then established, and thereupon to. The owner may procure, at his or their own the owner's expense, a certificate from the city engineer setting forth the number of cubic yards of cutting and filling made by him or them each owner in such the grading and proportions performed by each owner and certifying that the same work is done to establish the width and grade of said the street or to the centerline thereof of the street and thereafter to may file said the certificate with the city engineer. The engineer shall record the certificate in a properly indexed book kept for that purpose in his the engineer's office.~~

(2) (a) ~~Thereafter, whenever~~ *If* the council or commission orders the grading of ~~said the~~ street or any portion ~~thereof of the street~~ on which any grading, certified as provided in subsection (1), has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading. The owner ~~or owners and his or their the owner's~~ successors in interest ~~shall be~~ *are* entitled to credit on the assessment upon ~~his or their the owner's~~ lots and lands

fronting on ~~said the~~ street for the grading ~~thereof of the street~~ to the amount of the cubic yards of cutting and filling set forth in ~~his or their~~ the owner's certificate, at the prices named in the contract for ~~said the~~ cutting and filling or, if the grade ~~meanwhile~~ has been ~~duly~~ altered, only for so much of ~~said the~~ certified work as would be required for grading to the altered grade. ~~Such~~ The owner ~~or owners shall~~ is not be entitled to ~~such~~ credit as may be in excess of the assessments for grading upon the lots and lands owned by ~~him or them~~ the owner and proportionately assessed for the whole of ~~said the~~ grading.

(b) The city clerk shall include in the assessment, for the whole of ~~said the~~ grading upon the same grade, the number of cubic yards of cutting and filling set forth in ~~any and~~ all certificates so recorded in ~~his~~ the clerk's office, or for the whole of ~~said the~~ grading to the ~~duly~~ altered grade, and so much of ~~said the~~ certified work as ~~that~~ would be required for grading ~~thereto~~ and shall enter corresponding credits, deducting the ~~same~~ credits as payments upon the amounts assessed against the lots and land owned, respectively, by ~~said the~~ certified owners and their successors in interest, ~~provided, however~~ However, ~~that he shall~~ the clerk may not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading ~~which that~~ are made upon ~~any~~ lots and lands fronting upon ~~said the~~ street and belonging to ~~any such~~ certified owners or their successors in interest."

**Section 548.** Section 7-12-4168, MCA, is amended to read:

**"7-12-4168. Provision for work other than grading done by owner of property.** Whenever ~~any an~~ owner or owners of ~~any~~ lots and lands fronting on ~~any a~~ street shall have heretofore done or shall hereafter do any work, (excepting grading), on ~~such the~~ street in front of ~~any a~~ block at ~~his or their own~~ the owner's expense and the city council or commission shall subsequently order orders any work to be done of the same class in front of the same block, ~~said the~~ work so done at the expense of ~~such the~~ owner or owners shall ~~must~~ be excepted from the order ordering work to be done, ~~provided that if~~ the work so done at the expense of ~~such the~~ owner or owners shall ~~be~~ is upon the official grade and in condition satisfactory to the city engineer at the time ~~said that the~~ order is passed."

**Section 549.** Section 7-12-4170, MCA, is amended to read:

**"7-12-4170. Payment of damages incurred as a result of improvements.** Whenever the owner or anyone interested in ~~any~~ property situated within ~~any the~~ special improvement district, after filing with the clerk a written notice claiming that ~~his the~~ person's property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of ~~any an~~ improvement in the special improvement district:

(1) ~~and~~ if the resolution levying the assessment to defray the cost of making the improvement in the district is not passed and adopted by the city council, the amount to be recovered shall ~~must~~ be added to and constitute a part of the cost of making the improvement; ~~but~~

(2) ~~However,~~ if the resolution levying the assessment to defray the costs and expenses of making the improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in the district for the purpose of paying the amount awarded, and the supplemental resolution shall ~~must~~ be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvement."

**Section 550.** Section 7-12-4182, MCA, is amended to read:

**“7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies.** (1) In every *each* city or town ~~which shall provide that provides~~ by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of ~~this part and part 42 and this part~~ in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected ~~by him~~. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent. The city or town may, pursuant to 7-12-4184, order that all assessments that are delinquent for specific parcels of land as a result of acceleration be withdrawn.

(b) Upon delinquency in one or all installments, the whole property ~~shall~~ *must* be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.”

**Section 551.** Section 7-12-4185, MCA, is amended to read:

**“7-12-4185. Payment of tax under protest — action to recover.** (1) When ~~any a~~ tax levied and assessed under any of the provisions of ~~this part and part 42 and this part~~ is ~~deemed~~ *considered* unlawful by the party whose property is ~~thus~~ taxed or from whom ~~such the~~ tax is demanded, ~~such the~~ person may pay ~~such the~~ tax or any part thereof ~~deemed of the tax considered~~ unlawful under protest to the city or county treasurer, ~~as the case may be~~.

(2) ~~Thereupon, such~~ *The* party ~~so~~ paying *under protest* or ~~his the party's~~ legal representative may bring an action in any court of competent jurisdiction against the officer to whom ~~such the~~ tax was paid or against the city in whose behalf the ~~same~~ tax was collected to recover ~~such the~~ tax or any portion thereof ~~so of the tax~~ paid under protest. ~~Any~~ *An* action instituted to recover ~~any the~~ tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax ~~so~~ paid under protest ~~shall~~ *must* be held by the city or county treasurer, ~~as the case may be~~, until the determination of ~~any an~~ action brought for the recovery ~~thereof of the tax~~.”

**Section 552.** Section 7-12-4255, MCA, is amended to read:

**“7-12-4255. Contents of notice of hearing — protest.** (1) The notice ~~shall~~ *must* state the substance of the petition and the time and place for hearing and that any interested person or any person whose rights may be affected by the issuance or sale of the bonds or the levy of the special assessment, may, on or before the day fixed for the hearing on the petition, answer the petition and may appear at the hearing and contest the granting of the ~~prayer~~ *request* of the petition and the entry of any order of confirmation pursuant ~~thereto to the~~ *petition*.

(2) ~~Any~~ A person eligible to appear may enter ~~his~~ *an* appearance in the proceedings and answer the petition and contest the granting of the ~~prayer request~~ of the petition, and all provisions of the code of civil procedure ~~shall be~~ *are* applicable to the proceedings.”

**Section 553.** Section 7-12-4304, MCA, is amended to read:

**“7-12-4304. Protest against creation of lighting district.** At any time within 15 days after the date of the first publication of the notice of passage of the resolution of intention, ~~any~~ *an* owner of property liable to be assessed for ~~said~~ *the* work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. ~~Such~~ *The* notice must be in writing and be delivered to the clerk of the city council, who shall endorse ~~thereon~~ *on the notice* the date of its receipt ~~by him.~~”

**Section 554.** Section 7-12-4307, MCA, is amended to read:

**“7-12-4307. Objections to irregular proceedings or manner of making improvements.** (1) At any time within 60 days from the date of the award of ~~any~~ *a* contract by a city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting ~~said~~ *the* streets of ~~said~~ *the* city or town to be procured and erected, ~~any~~ *an* owner or other person having ~~any~~ *an* interest in ~~any~~ *a* lot or land liable to assessment who claims that any of the previous acts or proceedings relating to ~~said~~ *the* improvements are irregular, defective, erroneous, or faulty or that ~~his~~ *the* ~~person's~~ property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect ~~said~~ *the* acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent ~~his~~ *the* ~~person's~~ property will be damaged by the making of ~~said~~ *the* improvements. The city clerk shall deliver the notice to the council.

(2) All objections to ~~any~~ *an* act or proceeding or in relation to the making of ~~said~~ *the* improvements not made in writing and in the manner *and* at the time ~~aforsaid~~ *provided in subsection (1)* and all claims for damage ~~therefor~~ *shall be* ~~are~~ waived by ~~such~~ *the* property owners, ~~provided if~~ *if* the notice of the passage of the resolution of intention has been actually published and the notices of improvements *have been* posted as provided in this part.”

**Section 555.** Section 7-12-4309, MCA, is amended to read:

**“7-12-4309. Record of expenses to be kept by city engineer.** ~~It shall be~~ *The* city engineer ~~to~~ *shall* keep an account of all costs and expenses incurred in ~~his~~ *the* ~~engineer's~~ office in connection with ~~every~~ *each* special improvement district and certify the ~~same~~ *costs and expenses* to the city clerk.”

**Section 556.** Section 7-12-4325, MCA, is amended to read:

**“7-12-4325. Incidental expenses considered as costs of improvements.** The cost and expense connected with and incidental to the formation of ~~any~~ ~~such~~ *the* district, including the cost of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection, (including the compensation of the city engineer for work done ~~by him~~); the cost of printing and advertising as provided in this part; and the preparation of assessment rolls ~~shall~~ *must* be considered a part of the cost and expenses of making the improvements within ~~such~~ *the* special improvement district.”

**Section 557.** Section 7-12-4353, MCA, is amended to read:

**“7-12-4353. Objections to irregular proceedings or manner of making a modification.** (1) At any time within 60 days from the date of the award of a contract by a city or town council to implement the provisions of 7-12-4352 or at any time within 60 days from the date the council instructs an official of the city or town to cause the necessary equipment or appliances to be procured and installed, an owner of property liable to assessment who claims that any of the previous acts or proceedings relating to the modification are irregular, defective, erroneous, or faulty or that ~~his~~ *the person’s* property will be damaged by making the modification in the manner contemplated may file with the city or town clerk a notice specifying in what respect these acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent ~~his~~ *the person’s* property will be damaged by the modification.

(2) Objections to ~~any~~ *an* act or proceeding or in relation to the making of the modification not made in writing or not made in the manner provided for in subsection (1) and all claims for damage ~~therefor~~ are waived by the property owners, ~~providing if~~ the notice of the passage of the resolution has been published and the notices of the modification *have been* posted as provided in 7-12-4303.”

**Section 558.** Section 7-12-4604, MCA, is amended to read:

**“7-12-4604. Protest against creation of fire hydrant maintenance district.** At any time within 15 days after the date of the first publication or posting of the notice of passage of the resolution of intention, ~~any~~ *an* owner of property who would be liable for district assessments may make a written protest against the proposed improvement or the creation of the district, or both. The protest must be delivered, in writing, to the clerk of the city council, who shall endorse ~~thereon~~ *on the protest* the date of its receipt ~~by him.~~”

**Section 559.** Section 7-13-108, MCA, is amended to read:

**“7-13-108. Right to protest.** (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, ~~any~~ *an* owner of property liable to be assessed for ~~said~~ *the* work may make a written protest against the proposed work.

(2) ~~Such~~ *The* protest must be in writing and be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest* the date of ~~the~~ receipt ~~by him.~~”

**Section 560.** Section 7-13-124, MCA, is amended to read:

**“7-13-124. Resolution to assess and levy tax for making improvements.** (1) To defray the cost of making improvements in ~~any~~ *a* special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for ~~such~~ *that* purpose by using ~~for~~ *as* a basis for ~~such~~ *the* assessment the method provided for by this part.

(2) ~~Such~~ *The* resolution ~~shall~~ *must* contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the ~~same~~ *shall become* ~~payment becomes~~ delinquent.

(3) ~~Such~~ *The* resolution, signed by the ~~chairman~~ *presiding officer* of the board, ~~shall~~ *must* be kept on file in the office of the county clerk.”

**Section 561.** Section 7-13-209, MCA, is amended to read:

**“7-13-209. Right to protest.** (1) At any time within 21 days after the date of the first publication of the notice provided for in 7-13-208, ~~any an~~ owner of property liable to be assessed for ~~said the~~ service may make written protest against the proposed service or against the fees proposed to be charged for the service.

(2) ~~Such~~ *The* protest must be in writing and be delivered to the county clerk, who shall endorse ~~thereon on the protest~~ the date of ~~the receipt by him.~~”

**Section 562.** Section 7-13-218, MCA, is amended to read:

**“7-13-218. Role of county attorney.** The county attorney ~~shall be~~ *is* the legal ~~advisor~~ *adviser* of the solid waste management districts and boards within the county of ~~his jurisdiction~~ and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any ~~such suits in the event if~~ a conflict of interest would prohibit ~~such the~~ defense by the county attorney.”

**Section 563.** Section 7-13-2209, MCA, is amended to read:

**“7-13-2209. Application to include benefited lands.** Any A person whose lands are benefited by ~~such the~~ district may, in the discretion of ~~said the~~ board of county commissioners, have ~~such the~~ lands included within ~~said the~~ proposed district upon ~~his~~ application to the board of county commissioners of the county in which ~~his the~~ lands *be are located.*”

**Section 564.** Section 7-13-2241, MCA, is amended to read:

**“7-13-2241. Filing of petition of nomination.** (1) A petition of nomination, signed by at least five electors of the district for any one candidate, may be filed with the election administrator not earlier than 135 days or later than 75 days before the election. The election administrator shall endorse ~~thereon on the petition~~ the date upon which the petition was presented ~~to him.~~

(2) If the district lies in more than one county, the petition for nomination ~~shall must~~ be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under ~~this part and part 23 and this part.~~

(3) If the petition conforms to this section, the election administrator shall place the name of the petitioner on the ballot as a candidate for director of the district.”

**Section 565.** Section 7-13-2246, MCA, is amended to read:

**“7-13-2246. Withdrawal of candidacy.** (1) ~~Any An~~ individual who has been nominated as a candidate may, not later than 75 days before the day of election, cause ~~his the individual's~~ name to be withdrawn from nomination by filing with the election administrator a request ~~therefor for withdrawal~~ in writing, and ~~no a withdrawn name withdrawn~~ may *not* be printed upon the ballot.

(2) If, upon ~~such~~ withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions ~~therefor for nomination~~ not later than 75 days prior to the election.”

**Section 566.** Section 7-13-2247, MCA, is amended to read:

**“7-13-2247. Preservation of petitions.** The county clerk shall ~~preserve~~ *retain* in ~~his the clerk's~~ office for a period of 2 years all petitions of nomination filed under 7-13-2241.”

**Section 567.** Section 7-13-2278, MCA, is amended to read:

**“7-13-2278. Duties of administrative personnel.** (1) The general manager ~~shall have~~ *has* full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform ~~such~~ other duties as ~~that~~ may be imposed ~~upon him~~ by the board. The general manager shall report to the board in accordance with ~~such~~ rules as ~~that~~ it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform ~~such~~ other duties as ~~that~~ may be imposed by the board.

(3) The auditor ~~shall be~~ *is* charged with the duty of installing and maintaining a system of auditing and accounting that ~~shall must~~ completely and at all times show the financial condition of the district. ~~He~~ *The auditor* shall draw warrants to pay demands made against the district when ~~such the~~ demands have been first approved by at least three members of the board and by the general manager.”

**Section 568.** Section 7-13-2308, MCA, is amended to read:

**“7-13-2308. Payment of tax under protest — action to recover.** (1) ~~Where such~~ *When the* tax is deemed ~~considered~~ unlawful for any reason by the person whose property is taxed, whether or not ~~he~~ *the person* has protested the ~~same tax~~ at the hearing provided for in 7-13-2306(4), ~~he~~ *the person* may pay the tax or the installments ~~thereof of the tax~~ under protest in the manner provided by 15-1-402 and, ~~thereupon and~~ within the time prescribed and in the manner provided by 15-1-402, may commence an action to recover ~~such the~~ tax or installments and in ~~such that~~ action *may* contest and litigate the payment of ~~such the~~ tax on the same grounds and for the same reasons ~~that he has~~ stated in ~~his the~~ written protest and for no other reasons and on no other grounds.

(2) All of the provisions of 15-1-402 for the retention or refunding of taxes paid under protest ~~shall~~ apply to taxes paid under protest under this section.”

**Section 569.** Section 7-13-2342, MCA, is amended to read:

**“7-13-2342. Consolidation of county water and/or sewer districts.** (1) Two or more districts organized under the provisions of ~~this part and~~ part 22 ~~and this part~~ may consolidate at any time, upon petitions submitted to the board of directors of each ~~such~~ district. ~~Such~~ *The* petitions ~~shall must~~ be in the form required for petitions for the organization of districts. Each ~~such~~ petition ~~shall must~~ be signed by not less than 10% of the registered voters of the territory included within ~~said the~~ district.

(2) ~~Said~~ *The* petitions may be granted by ordinance of the board of directors of each of ~~said districts~~ *district*. ~~Such~~ *The* ordinances ~~shall must~~ be submitted for adoption or rejection to the vote of the electors in ~~such districts~~ *the district* at general or special elections held, as provided in ~~this part and~~ part 22 ~~and this part~~, within 70 days after the adoption of ~~such the~~ ordinances.

(3) If ~~such the~~ ordinances are approved, the president and secretary of the boards of directors of each of ~~said districts~~ *district* shall certify that fact to the secretary of state and to the county clerk of the county or counties in which ~~such the~~ districts are located. Upon the receipt of ~~said the~~ certificate, the secretary of state shall within 10 days issue ~~his a~~ certificate, reciting the passage of ~~said the~~ ordinances and the consolidation of ~~said the~~ districts. A copy of ~~such the~~



certificate shall *must* be transmitted to and filed with the county clerk of each county in which ~~such the~~ consolidated district is situated.

(4) ~~From and after~~ *After* the date of ~~such the~~ certificate, the districts shall be ~~deemed are considered~~ to be consolidated and shall consist of one district with all the rights, privileges, and powers set forth in ~~this part and~~ part 22 *and this part* and necessarily incident ~~thereto to those rights, privileges, and powers.~~

(5) The number and manner of selection and election of directors of the consolidated district shall *must* be the same as the number and manner of selection and election of directors of newly organized districts.”

**Section 570.** Section 7-13-2345, MCA, is amended to read:

**“7-13-2345. Hearing and notice on petition to exclude land.** (1) Upon the filing of ~~such a~~ petition with the secretary of the district, ~~he the secretary~~ shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of ~~such the~~ petition to be published as provided in 7-1-2121. ~~Such The~~ notice shall ~~also must~~ state the date of the filing of ~~such the~~ petition and that the ~~same petition will come on for hearing be heard~~ before the board of directors of the district.

(2) ~~Any A~~ landowner or taxpayer within the district shall ~~have has~~ the right to appear at ~~said the~~ hearing, either in behalf of or in opposition to the granting of ~~said the~~ petition. ~~Said The~~ petition shall ~~come on for hearing must be heard~~ before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing shall *must* be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district.”

**Section 571.** Section 7-13-2505, MCA, is amended to read:

**“7-13-2505. Processing of petition.** (1) Upon the filing of ~~such the~~ petition or petitions, the county clerk and recorder shall examine the petition and certify whether the required number of signers are found ~~thereon on the petition.~~ After the examination of the petition, the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers.

(2) Within 30 days following the receipt of ~~such the~~ petitions, the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the ~~greater greatest~~ number of petitioners reside, together with ~~his the clerk and recorder's~~ certificate and the certificates of any other county clerk and recorder as to the sufficiency ~~thereof of the petitions.~~”

**Section 572.** 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 ~~such that~~ service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for ~~his 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 ~~shall~~ *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 573.** Section 7-14-205, MCA, is amended to read:

**“7-14-205. Petition to be filed with election administrator — certificate.** (1) The complete petition ~~shall~~ *must* be filed with the election administrator.

(2) The election administrator shall, within 30 days ~~thereafter~~, carefully examine the petition and attach to it a certificate under ~~his~~ *the administrator’s* official signature and ~~the~~ seal of ~~his~~ office. The certificate ~~shall~~ *must* set forth:

(a) the total number of individuals who are registered electors within the proposed transportation district; and

(b) which and how many of the individuals whose names are on the ~~petitions~~ *petition* are qualified to sign the petition.”

**Section 574.** Section 7-14-1103, MCA, is amended to read:

**“7-14-1103. Commissioners.** (1) The powers of each authority are vested in the commissioners ~~thereof of the authority~~. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There must be elected a ~~chairman presiding officer~~ and ~~vice-chairman vice presiding officer~~ from among the commissioners. An authority may employ an executive director, secretary, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as that~~ *as that* it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees ~~such the~~ *the* powers or duties ~~as that~~ it considers proper.

(3) A commissioner of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ duties. Each commissioner shall hold office until ~~his~~ *a* successor has been appointed or elected and has qualified. The certificates of the appointment, reappointment, or election of commissioners must be filed with the authority.”

**Section 575.** Section 7-14-2121, MCA, is amended to read:

**“7-14-2121. County road districts.** (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in ~~his~~ *the* district.

(2) If the board does not divide the county into districts, the county ~~itself~~ *shall constitute constitutes* one road district.”

**Section 576.** Section 7-14-2122, MCA, is amended to read:

**“7-14-2122. County road supervisor.** (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve ~~during~~ *at* the pleasure of the board. In ~~any~~ *a* county in which the county surveyor is not paid an annual salary, ~~he~~ *the surveyor* may by agreement be employed by the board to perform the services of road supervisor. ~~He~~ *shall*

*The surveyor may not be paid for any duty otherwise required by law to be performed by him as county surveyor.*

(2) Under the direction and control of the board, ~~he~~ *the road supervisor* shall:

- (a) prescribe the times and places for all work to be done on the county roads;
- (b) report any delinquency or inefficiency of ~~any~~ *a* person employed on ~~any~~ *a* road;
- (c) perform other duties ~~which~~ *that* are prescribed by the board.”

**Section 577.** Section 7-14-2135, MCA, is amended to read:

**“7-14-2135. Notice to remove encroachment.** (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

- (a) by leaving it at ~~his~~ *the occupant’s or owner’s* place of residence if ~~such~~ *the* person resides in the county; or
- (b) by posting it on the encroachment if ~~such~~ *the* person does not reside in the county.”

**Section 578.** Section 7-14-2137, MCA, is amended to read:

**“7-14-2137. Legal actions to remove encroachments or recover costs.** (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the ~~same~~ *encroachment* as a nuisance.

(b) If ~~he~~ *the road supervisor* recovers judgment, ~~he~~ *the supervisor* may have ~~his~~ *the supervisor’s* costs and \$10 for ~~every~~ *each* day ~~such~~ *the* nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) ~~He~~ *The supervisor* may recover the expense of removal, \$10 for each day the encroachment remains after notice, and costs in an action brought for that purpose.”

**Section 579.** Section 7-14-2201, MCA, is amended to read:

**“7-14-2201. Maintenance and control of bridges.** (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of transportation.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever ~~any~~ *a* bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if ~~he~~ *the surveyor* is in charge, shall repair the bridge upon being notified ~~thereof~~ *of the need for repair*.

(b) ~~Nothing in this~~ *This* subsection shall (3) *may not* be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part, "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county."

**Section 580.** Section 7-14-2302, MCA, is amended to read:

**"7-14-2302. Duties of county road superintendent.** (1) Under the direction and supervision of the board of county commissioners, the superintendent shall furnish plans and specifications for highway or bridge work. ~~He shall be chairman~~ *The superintendent is the presiding officer* of all boards of road viewers.

(2) Under ~~such~~ direction and supervision, ~~he the superintendent~~ shall also:

(a) take charge of all roads, bridges, and causeways under the jurisdiction of the county;

(b) open all new roads when they are ~~duy~~ established and ordered to be opened by the board;

(c) perform, at the time and in the manner directed by the board, whatever ~~shall be~~ *is* lawfully directed by the board concerning the public highways under the jurisdiction of the county."

**Section 581.** Section 7-14-2303, MCA, is amended to read:

**"7-14-2303. Equipment used by road superintendent.** (1) Upon the requisition of the superintendent, the board of county commissioners shall furnish any necessary equipment, tools, and implements and pay for them out of the county road fund.

(2) The superintendent shall preserve the equipment, tools, and implements and ~~shall may~~ not allow them to be used except on public highways. At the expiration of ~~his the superintendent's~~ term of office or upon ~~his~~ removal ~~therefrom~~ *from office*, ~~he must the supervisor~~ *shall* turn over all equipment, tools, and implements to ~~his~~ *a* successor or to the board."

**Section 582.** Section 7-14-2306, MCA, is amended to read:

**"7-14-2306. Records and receipts to be maintained.** The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. ~~He~~ *The superintendent* shall give to each person performing work or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid ~~therefor~~ *for the work*."

**Section 583.** Section 7-14-2308, MCA, is amended to read:

**"7-14-2308. Superintendent's report.** At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of ~~his the superintendent's~~ office and containing any other information the board requires. At the first monthly or quarterly meeting held after filing of a superintendent's report, the board of county commissioners shall examine ~~it~~ *the report*."

**Section 584.** Section 7-14-2606, MCA, is amended to read:

**"7-14-2606. Survey of road.** (1) The board may order the county surveyor, or some other competent surveyor if the county surveyor is incompetent, to survey and plat the road. ~~He~~ *The surveyor* shall file ~~his the surveyor's~~ field notes with the county clerk and recorder.

(2) The surveyor ~~shall~~ *must* receive \$7 ~~per~~ *a* day and actual traveling expenses."

**Section 585.** Section 7-14-2607, MCA, is amended to read:

**“7-14-2607. Damages resulting from establishment or alteration of road.** (1) Whenever the board makes an order establishing or changing any road, it ~~must find~~ *shall determine* the amount of damages sustained by each owner or claimant of lands or improvements ~~thereon~~ affected by the road. Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, ~~shall must~~ be the amount of damages awarded.

(2) Damages ~~shall must~~ be paid to the owner or claimant, if known, upon ~~his the owner or claimant~~ showing or establishing ~~his the~~ right or title to the lands or improvements and furnishing proper deeds and releases.”

**Section 586.** Section 7-14-2613, MCA, is amended to read:

**“7-14-2613. Notice to district supervisor of opening or alteration of county road.** When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish ~~him~~ *the supervisor* with a certified copy of the order of the board.”

**Section 587.** Section 7-14-2705, MCA, is amended to read:

**“7-14-2705. Meeting between county road superintendent, residents, and owners of land.** (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or ~~his the superintendent's~~ deputy, all owners upon whose lands special assessments will be levied, and all residents within the proposed district.

(2) All owners of land fronting on the road or land within 2 miles on either side of it upon which special assessments will be levied and all residents within the proposed district may meet with the superintendent or ~~his the superintendent's~~ duly appointed deputy.”

**Section 588.** Section 7-14-2707, MCA, is amended to read:

**“7-14-2707. Meeting procedure — election of committee of supervisors.** (1) The superintendent or ~~his the superintendent's~~ deputy, or in their absence one of the landowners or residents present, shall preside. Those present shall elect three *individuals* as a committee of supervisors, at least one of ~~them shall~~ *whom must* be a petitioner.

(2) A majority of the owners and residents present and voting ~~shall be~~ *is* sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local improvement district or residents within the proposed district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors. The superintendent or ~~his the superintendent's~~ deputy may administer the oath, or it may be administered by anyone ~~so~~ authorized by law *to do so*.”

**Section 589.** Section 7-14-2708, MCA, is amended to read:

**“7-14-2708. Investigation of proposed road — obtaining releases for damages.** The committee and the surveyor or ~~his the surveyor's~~ deputy shall:

- (1) immediately view, examine, and survey the road petitioned for;
- (2) examine and determine the lands ~~which~~ *that* will be specially benefited by the road and ~~which~~ *that* should be included within the district that is to be assessed;
- (3) ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road; and
  - (a) obtain, if possible without cost, the release in writing of each person of ~~his~~ *the person's* claim for ~~such~~ damage or injury; or
  - (b) arrange, when necessary, for a release to be given for ~~such an~~ amount as ~~may be~~ *that is* fair and reasonable.”

**Section 590.** Section 7-14-2709, MCA, is amended to read:

**“7-14-2709. Preparation and presentation of plans, estimates, and report.** (1) The road superintendent shall without delay prepare plans and specifications and cost estimates. ~~He~~ *The superintendent* shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands ~~shall~~ *must be the value* that ~~which~~ appears on the last annual assessment roll of the county for the levying of general taxes.

(2) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, ~~he~~ *the superintendent* shall make a detailed report. The report ~~shall~~ *must* state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.”

**Section 591.** Section 7-14-2712, MCA, is amended to read:

**“7-14-2712. Inspector of works — compensation.** (1) The committee and road superintendent together shall appoint ~~some a~~ suitable and competent person other than ~~they the~~ *the committee or the superintendent* to act as an inspector of the work. ~~He shall~~ *The inspector must be upon present at the location of the work* at all times during its progress and ~~shall~~ *inspect the performance thereof of the work.* ~~He~~ *The inspector* shall report to and be under the supervision of the superintendent.

(2) ~~He shall~~ *The inspector must* be paid for ~~his services as inspector~~ at the rate of \$5 ~~per a~~ day for the time ~~he is~~ actually engaged ~~thereon as inspector.~~”

**Section 592.** Section 7-14-2719, MCA, is amended to read:

**“7-14-2719. Procedure for payment of claims.** (1) The committee shall approve and certify all claims and accounts for services and ~~every kind of any~~ expense payable from funds of the district.

(2) The county auditor, or the county clerk ~~and recorder~~ in ~~any a~~ county ~~which has no~~ *that does not have an* auditor, shall then audit all ~~such~~ claims and accounts. ~~Thereafter he~~ *The person conducting the audit* shall issue a *payment order* to the treasurer ~~an order~~ in favor of the person to whom the claim or account is payable ~~to pay it.~~

(3) Upon presentation of the order by the person to whom it was issued or ~~his~~ *the person's* assignee, the treasurer shall pay ~~it~~ *the order* from the funds of the district.”

**Section 593.** Section 7-14-2720, MCA, is amended to read:

**“7-14-2720. Payments while work in progress.** (1) The surveyor, with the approval of the committee, shall make estimates of the ~~proportion amount~~ of the work completed. After auditing, the estimates may be paid by the treasurer, to an amount not exceeding 80%, during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order ~~only~~ from ~~such~~ the assessments ~~as shall~~ that have been collected prior to the ~~issue~~ issuance of the bonds and from the proceeds of the sales of the bonds after ~~issue~~ issuance.

(3) If the board has ordered that the contractor ~~shall~~ must receive bonds in payment, the order for payment ~~shall~~ must call for bonds instead of money. The treasurer shall deliver the bonds, dating them *with* the day ~~he delivers them of delivery~~ to the contractor, and interest ~~shall run therefrom~~ must accrue from *that date*.”

**Section 594.** Section 7-14-2721, MCA, is amended to read:

**“7-14-2721. Disposition of excess funds after full payment for road.**

(1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury ~~which that~~ belongs to the district ~~shall~~ must be refunded on demand. A rebate ~~therefrom~~ shall ~~must~~ be made on demand to any person who ~~shall~~ has not have paid ~~his an~~ assessment in full.

(2) Demand ~~shall~~ must be made within 2 years from the date upon which the assessment became due.

(3) Any ~~such~~ money remaining in the county treasury after the expiration of 2 years for which ~~no~~ demand has *not* been made; ~~shall go into~~ must be deposited in the general fund.”

**Section 595.** Section 7-14-2753, MCA, is amended to read:

**“7-14-2753. Details relating to bonds.** (1) Each bond ~~shall~~ must provide that the holder ~~shall~~ may not demand payment until it comes due. ~~It shall~~ The bond must bear interest payable annually and ~~shall~~ must have interest coupons for each interest payment attached.

(2) Each bond and coupon ~~shall~~ must bear the date of issuance and be made payable to *the* bearer. Each bond ~~shall~~ must be signed by the ~~chairman~~ *presiding officer* of the board and attested by the county clerk *and recorder*. The seal of the board ~~shall~~ must be affixed to each bond.

(3) Bonds ~~shall~~ must be issued in denominations of not less than \$100 or more than \$1,000.

(4) Each bond ~~shall~~ must contain a reference to the district for which it is issued and to the order and record authorizing the issue. ~~It shall~~ The bond must state that it is payable only out of the local improvement funds created by special assessment and not otherwise.

(5) On its face, each bond ~~shall~~ must bear the designation of the district: “local improvement district No. .... in .... County, Montana”.

(6) The board may also direct in the order providing for issuance of the bonds that they be sold by the treasurer at a *value* not less than par ~~value~~ and accrued interest.”

**Section 596.** Section 7-14-2756, MCA, is amended to read:

**“7-14-2756. Payment of assessment — release from bond obligations.**

(1) At any time within 30 days after notice, the owner may pay the assessment

and release and discharge ~~his~~ *the owner's* lands ~~therefrom~~ and from the operation and effect of the bonds.

(2) ~~No bonds shall~~ *Bonds may not* be issued until 20 days after the expiration of 30 days after notice. ~~No bonds shall~~ *Bonds may not* be issued for any assessment paid in full within the 30 days.”

**Section 597.** Section 7-14-2761, MCA, is amended to read:

**“7-14-2761. Rights of bondholders.** (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed ~~in his own name~~ *individually* to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest ~~thereon~~, ~~any such~~ *the* owner shall recover 5% of the costs of ~~his~~ *the* suit.

(2) Any number of holders of bonds for ~~any~~ *a* single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor ~~any~~ *an* owner of any bond ~~shall~~ *may* have ~~any~~ *a* claim against the county through which the bond is issued except for the assessments. ~~His~~ *The* remedy in case of nonpayment ~~shall be~~ *is* confined to the enforcement of the assessments.

(4) A copy of this section ~~shall~~ *must* be plainly written, printed, or engraved on each bond.”

**Section 598.** Section 7-14-2802, MCA, is amended to read:

**“7-14-2802. Construction and operation of ferries uniting two counties.** (1) When a public ferry, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ~~ferryman~~ *individuals* are employed on joint ferries, they shall report quarterly to each board, giving ~~such~~ *the* information ~~as~~ *that* each board may require.”

**Section 599.** Section 7-14-2805, MCA, is amended to read:

**“7-14-2805. Establishment and operation of public ferry or wharf by county upon its own motion.** (1) Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more ~~ferryman~~ *individuals* to operate ~~such~~ *the* free or toll ferries and wharves.

(2) While ~~such~~ ferries or wharves are ~~so~~ owned by ~~any~~ *a* county and operated and managed by ~~such~~ *the* board, ~~such~~ *the* operation ~~shall be~~ and is hereby expressly declared to be a governmental function.

(3) The board may also lease any ferries or wharves owned by ~~such~~ *the* county to a company, firm, or individual to be operated for the use of the public. ~~Said~~ *A* company, firm, or individual shall give *a* bond, in an amount ~~deemed~~ *considered* sufficient by the board, conditioned for the careful and ~~business-like~~ *businesslike* operation of ~~such~~ *the* ferry or wharf in accordance with law and the regulations of ~~said~~ *the* board. ~~While such~~ *When a* ferry or wharf is ~~so~~ operated by a lessee of ~~said~~ *the* county, ~~such~~ *the* operation is ~~expressly declared to be~~ the private function of ~~such~~ *the* lessee.”



**Section 600.** Section 7-14-2823, MCA, is amended to read:

**“7-14-2823. Hearing and decision on application.** (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner ~~thereof~~ *of the landing* to apply, is entitled ~~thereto~~ *to operate the ferry*, authority to erect and take tolls on the ferry may be granted to ~~him~~ *the applicant* for the term of 10 years. The board may at any time ~~they see fit~~ authorize and maintain fords across any water within any distance of ~~any~~ a ferry.

(2) The board granting authority to keep a public ferry ~~must~~ *shall* at the same time:

(a) fix the amount of a bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross on the ~~same~~ *ferry* and provide for the annual renewal ~~thereof~~ *of the bond*;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls ~~thereon~~ *on the ferry*, not less than \$3 or ~~over more than~~ *\$100 per* a month, payable annually;

(c) fix the rate of tolls ~~which~~ *that* may be collected for crossing on the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries ~~which they have~~ *that it has* by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, ~~he must~~ *the commissioner may not act in any such those matters.*”

**Section 601.** Section 7-14-2826, MCA, is amended to read:

**“7-14-2826. Regulation of ferry operation — penalties.** (1) The board of *county* commissioners may make ~~all needful~~ rules for the government of ferries and ferrykeepers prescribing:

(a) how many boats must be kept, their character, and how ~~they are~~ propelled;

(b) the number of ~~hands, boatmen, or ferrymen~~ *individuals* to be employed and rules for their ~~government~~ *supervision*;

(c) when and under what circumstances ~~to~~ *ferries may* make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril ~~not to cross~~ *a crossing is to be*;

(f) penalties for violation of ~~regulations~~ *rules*;

~~(g) in case of steamboats, the rate of speed;~~

~~(h)~~*(g)* the method of and preference in loading and crossing; and

~~(i)~~*(h)* how and by whom action ~~must~~ *may* be brought to recover penalties.

(2) Subject to the ~~foregoing~~ *regulations rules*, ~~ferrykeepers must~~ *ferry operators shall* make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of ~~every~~ a ferry ~~must~~ shall have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ~~ferrykeepers~~ ~~must~~ ferry operators shall keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance ~~herewith~~ with this subsection is neglected, \$25 is forfeited, to be collected, except as provided in 3-10-601, for the use of the road fund of the county."

**Section 602.** Section 7-14-2827, MCA, is amended to read:

**"7-14-2827. Surety bond required.** The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of county commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition and that the owner or keeper will faithfully comply with the laws of the state and all legal orders of the board regulating the same ferry and pay all damages recovered against ~~him~~ the owner or keeper by any person injured or damaged by reason of delay at or defect in ~~such~~ the ferry or in any manner resulting from a noncompliance with the laws or lawful orders regulating the same ferry. The bond must be approved by the board."

**Section 603.** Section 7-14-2828, MCA, is amended to read:

**"7-14-2828. Report required.** Every An owner or keeper of a ferry ~~must~~ shall report annually to the board of county commissioners from which his a license is obtained, under oath, the following facts:

- (1) the actual cost of the construction or erection and equipment of the ferry;
- (2) the repairs made during the preceding year and the actual cost ~~thereof~~ of the repairs;
- (3) the expense of labor and ~~hire~~ of hiring agents and other costs necessarily incurred ~~in and about~~ with regard to the conduct of ~~his~~ the business;
- (4) the amount of tolls collected; and
- (5) the estimated actual cash value of the ferry, exclusive of the franchise."

**Section 604.** Section 7-14-4201, MCA, is amended to read:

**"7-14-4201. Establishment and alteration of street grade.** (1) The city or town council ~~has power to~~ may establish the grade of any street, alley, or avenue.

(2) When the grade has been established, it ~~must~~ may not be changed except by a vote of the majority of the council and not ~~then~~ until the damage to property owners caused by the change of grade has been assessed and determined by three disinterested appraisers. ~~who~~ The appraisers must be appointed by the mayor and confirmed by the council. ~~who must~~ The appraisers shall make an ~~appraisal~~ appraisal, taking into consideration the benefits, if any, to the property, and ~~who must~~ shall file their report with the city or town clerk within 10 days after receiving notice of their appointment. The amount of damages ~~so~~ assessed must be tendered to the owner or ~~his~~ the owner's agent before any change of grade is made."

**Section 605.** Section 7-14-4203, MCA, is amended to read:

**"7-14-4203. Determination of damages.** (1) ~~In case~~ If the council of ~~such~~ the city or town and the owner of ~~such~~ a building are unable to agree upon the amount of ~~such~~ damages from the change of a street grade, the council ~~must~~ shall

appoint three disinterested freeholders of ~~such~~ *the* city or town to appraise ~~such~~ *the* damages.

(2) The appraisers ~~so appointed~~, after being duly sworn, ~~must~~ *shall* appraise the damage and make ~~two~~ *a* written reports ~~report~~ *thereof*, signed by at least a majority of them, ~~one of which~~. *One copy* must be delivered to the clerk of ~~such~~ *the* city or town to be immediately filed in ~~his~~ *the* clerk's office and ~~the other~~ *another copy must be delivered* to the owner of the building. ~~Such~~ *The* report must be made and delivered within 10 days after the appointment of the appraisers."

**Section 606.** Section 7-14-4301, MCA, is amended to read:

**"7-14-4301. Regulation of railways.** (1) The city or town council ~~has power to~~ *may* grant the right-of-way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, to regulate the running and management of the ~~same~~ *railroads* and to compel the owner of ~~such~~ *a* street or other railroad to keep the street in repair when occupied by ~~such~~ *the* street or other railroad, to regulate the speed of railroad engines, and to require railroad companies to station ~~flagmen~~ *flag persons* at street crossings.

(2) The city or town council ~~has power to~~ *may* regulate and control the laying of railroad tracks and ~~to~~ *may* prohibit the use of engines and locomotives ~~propelled by steam or otherwise or to~~ regulate the speed ~~thereof when used of~~ *engines and locomotives.*"

**Section 607.** Section 7-14-4612, MCA, is amended to read:

**"7-14-4612. Organization and operation of commission.** (1) The powers of each commission ~~shall be~~ *are* vested in the ~~current~~ *current* members ~~thereof~~ *then in office of the commission.*

(2) The appointing officer shall designate which of the members of the commission ~~shall be~~ *is* the first ~~chairman~~ *presiding officer*, but when the office of ~~chairman~~ *presiding officer* of the commission becomes vacant ~~thereafter~~, the commission shall elect a ~~chairman~~ *presiding officer* from among its members. The term of office as ~~chairman~~ *presiding officer* of the commission, unless otherwise prescribed by the legislative body of the city, ~~shall~~ *must* be for the calendar year or for that portion ~~thereof of a year~~ remaining after each ~~such~~ *chairman presiding officer* is designated or elected.

(3) Members ~~shall~~ *must* receive their actual and necessary expenses, including traveling expenses, and may receive ~~such~~ other compensation ~~as that~~ *as* the legislative body may prescribe."

**Section 608.** Section 7-14-4665, MCA, is amended to read:

**"7-14-4665. Role of appointed receiver.** If a receiver is appointed pursuant to 7-14-4664(2)(b), ~~he~~ *the* receiver may enter and take possession of ~~such~~ *the* parking facility or any part ~~thereof of the facility~~, and operate and maintain the ~~same~~ *facility*, and collect and receive all fees, rents, ~~revenues~~ *revenue*, or other charges ~~thereafter arising therefrom~~ *from the facility*. The receiver shall keep ~~such~~ *the* money in a separate account or accounts and apply the ~~same~~ *money* in accordance with the obligations of ~~said~~ *the* commission as the court ~~shall direct~~ *directs.*"

**Section 609.** Section 7-14-4717, MCA, is amended to read:

**"7-14-4717. List of unpaid assessments.** After expiration of the prescribed time from the date of the warrant and after the treasurer has recorded the return, ~~he~~ *the* treasurer shall make and certify to the clerk ~~and~~

recorder a complete list of all unpaid assessments ~~which~~ *that* amount to \$25 or ~~over~~ *more* upon any assessment.”

**Section 610.** Section 7-14-4718, MCA, is amended to read:

**“7-14-4718. Removal of property from list.** (1) If any person before certification of the list to the clerk *and recorder* presents to the treasurer ~~his~~ *an* affidavit that ~~he~~ *the person* is the owner of a lot ~~in~~ *on* the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that ~~he desires~~ *no the person does not desire* a bond to be issued for the assessment upon the lot, then the assessment ~~shall~~ *may* not be included in the list and ~~shall remain~~ *remains* collectible as provided by ~~this part and parts 41 and 42 of chapter 12 and this part.~~

(2) ~~Omission~~ *Failure* to file the notice ~~shall bar~~ *bars* any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.”

**Section 611.** Section 7-14-4721, MCA, is amended to read:

**“7-14-4721. Assessments converted to bond liability.** (1) The treasurer, at the time ~~he~~ *the treasurer* certifies the list of unpaid assessments to the clerk *and recorder*, shall write the word “certified” on the record of the assessment opposite each assessment included in the list, and ~~thereupon~~ all assessments of \$25 or ~~over~~ *more* shall cease to be payable in cash and ~~shall thereafter be~~ *are* payable only in equal annual installments on December 1 in each year ~~preceding~~ *January 1 on* in which the bonds become due. The governing body may provide a plan ~~whereby~~ *for collection of* the annual installment ~~may be collected~~ in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed ~~shall continue and remain~~ *remains* in full force and effect for 2 years after the last installment on the assessment becomes due or until the assessment is fully paid.

(2) The number of installments in which the assessment is payable shall *must* correspond to the number of years in which there are bonds to be paid, but the total number of installments ~~shall~~ *may* not exceed 25.”

**Section 612.** Section 7-15-2107, MCA, is amended to read:

**“7-15-2107. Application for incorporation.** (1) The commissioners of the authority shall present to the secretary of state an application signed by them ~~which shall~~ *that must* set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held ~~as aforesaid~~ and that the board of county commissioners made the ~~aforesaid~~ determination *provided for in 7-15-2105* after ~~such~~ *the* hearing and appointed them as commissioners;

(b) the name and official residence of each ~~of the commissioners commissioner~~, together with a certified copy of the appointment evidencing ~~their~~ *the commissioner's* right to office, the date and place of induction into and taking *the* oath of office, and that ~~they~~ *the commissioners* desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name ~~which~~ *that* is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application ~~shall~~ *must* be subscribed and sworn to by each of ~~said commissioners~~ *commissioner* before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that ~~he the officer~~ personally knows the ~~commissioners~~ *commissioner* and knows ~~them the commissioner~~ to be ~~the officers~~ *an officer* as asserted in the application and that ~~each the commissioner~~ subscribed and swore ~~thereto~~ *to the application* in the officer's presence."

**Section 613.** Section 7-15-2108, MCA, is amended to read:

**"7-15-2108. Processing of application by secretary of state.** (1) The secretary of state shall examine the application, and if ~~he finds that~~ the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, ~~he the secretary of state~~ shall receive and file it and shall record it in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the ~~same~~ *certificate* with the application."

**Section 614.** 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, ~~such~~ *the modification shall be* subject to ~~such~~ *any* rights at law or in equity ~~as that~~ a lessee or purchaser or ~~his~~ *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) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are ~~hereby~~ validated.

(4) 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 615.** Section 7-15-4234, MCA, is amended to read:

**"7-15-4234. Urban renewal agency to be administered by appointed board of commissioners.** (1) If the urban renewal agency is authorized to transact business and exercise powers ~~hereunder~~ *under this part*, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, ~~which shall consist~~ *consisting* of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each *subsequent* appointment ~~thereafter shall~~ *must* be for 4 years. A certificate of the appointment or reappointment of ~~any a~~ *a* commissioner ~~shall~~ *must* be filed with the clerk of the municipality, and ~~such the certificate shall be~~ *is* conclusive evidence of the ~~due and~~ proper appointment of ~~such the~~ *the* commissioner.

(3) Each commissioner shall hold office until ~~his a~~ *a* successor has been appointed and has qualified.

(4) A commissioner ~~shall~~ *may not* receive ~~no~~ compensation for his services but ~~shall be~~ *is* entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.”

**Section 616.** Section 7-15-4239, MCA, is amended to read:

**“7-15-4239. Control of conflict of interest.** (1) (a) ~~No~~ A public official, ~~no~~ employee of a municipality or urban renewal agency, ~~and no~~ or department or officers ~~which that~~ have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 ~~shall may not~~ voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of ~~such the~~ the municipality, or in any contract or proposed contract in connection with ~~such an~~ an urban renewal project.

(b) ~~Where such~~ *When an* acquisition is not voluntary, the interest acquired ~~shall must~~ be immediately disclosed in writing to the local governing body, and ~~such the~~ disclosure ~~shall must~~ be entered upon the minutes of the governing body.

(2) ~~If any such an~~ official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property ~~which he that the person~~ knows is included in an urban renewal project, ~~he the person~~ shall immediately disclose this fact in writing to the local governing body, and ~~such the~~ disclosure ~~shall must~~ be entered upon the minutes of the governing body. ~~Any such An~~ official or a department or division head ~~shall may not~~ participate in any action on that particular project by the municipality or urban renewal agency, department, or officers ~~which that~~ have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.”

**Section 617.** Section 7-15-4264, MCA, is amended to read:

**“7-15-4264. Obligations of transferees of municipal property in urban renewal area.** (1) The purchasers or lessees and their successors and assigns ~~shall be~~ *are* obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with ~~such other~~ requirements ~~as that~~ the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on ~~such~~ real property required by the urban renewal plan.

(2) ~~The municipality in~~ *In* any instrument of conveyance to a private purchaser or lessee, ~~the municipality~~ may provide that ~~such the~~ purchaser or lessee ~~shall be without power to~~ *may not* sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until ~~he the purchaser or lessee~~ has completed the construction of any and all improvements ~~which he has that the purchaser or lessee is~~ obligated ~~himself~~ to construct thereon.

(3) The inclusion in ~~any such a~~ contract or conveyance to a purchaser or lessee of any ~~such~~ covenants, restrictions, or conditions, (including the incorporation by reference ~~therein~~ of the provisions of an urban renewal plan or any part thereof) ~~of a plan,~~ *shall may not* prevent the recording of ~~such the~~

contract or conveyance in the land records of the clerk and recorder ~~or of the~~ county in which ~~such~~ the city or town is located, in ~~such a manner as to afford~~ that provides actual or constructive notice ~~thereof of the covenants, restrictions, or conditions.~~"

**Section 618.** Section 7-15-4402, MCA, is amended to read:

**"7-15-4402. Definitions.** As used in ~~this part or~~ part 45 ~~or this part~~, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Authority" or "housing authority" means a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions ~~hereinafter~~ set forth ~~in part 45 or this part~~.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to ~~this part or~~ part 45 ~~or this part~~.

(3) "City" means ~~any~~ a city ~~which~~ that is or is about to be included in the territorial boundaries of an authority.

(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers ~~thereof~~ charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" means real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority ~~and/or~~ or the occupants of the dwelling accommodations.

(7) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing a city.

(9) "Elderly families" means families ~~of which~~ the head of ~~which~~ (~~the family~~ or ~~his~~ that person's spouse) is *at least* 60 years of age ~~or over~~ and who otherwise qualify as persons of low income ~~within the meaning of the definition set forth in subsection (16)~~.

(10) "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; ~~and/or~~ or

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term “housing project” may also be applied to:

(i) the planning of the buildings and improvements;

(ii) the acquisition of property;

(iii) the demolition of existing structures;

(iv) the construction, reconstruction, alteration, and repair of the improvements; and

(v) all other work in connection ~~therewith~~ *with subsections (12)(b)(i) through (12)(b)(iv).*

(13) “Mortgage” means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale ~~thereof of the bonds.~~

(14) “Municipality” means ~~any~~ a city, town, or incorporated village ~~which that~~ is located within the territorial boundaries of an authority.

(15) “Obligee of the authority” or “obligee” means ~~any~~ a bondholder, a trustee for any bondholder, ~~any~~ a lessor demising property to the authority used in connection with a housing project or any assignee or assignees of ~~such the~~ lessor’s interest or any part ~~thereof of the interest~~, and the United States when it is a party to any contract with the authority.

(16) “Persons of low income” means persons or families who lack the amount of income ~~which that~~ is necessary, (as determined by the authority undertaking the housing project), to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) “Real property” means lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right ~~therein in an estate~~, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) “State” means the state of Montana.

(19) “Trust indenture” means instruments pledging the ~~revenues~~ *revenue* of real or personal properties but not conveying ~~such the~~ properties or conferring a right to foreclose and cause a sale ~~thereof of the properties.~~”

**Section 619.** Section 7-15-4409, MCA, is amended to read:

**“7-15-4409. Application for incorporation.** (1) The commissioners shall present to the secretary of state an application signed by them ~~which shall that must~~ set forth, (without any detail other than the mere recital):

(a) that a notice has been given and a public hearing has been held as ~~aforsaid provided in 7-15-4405~~, that the council made the ~~aforsaid~~ determination ~~provided for in 7-15-4406~~ after ~~such the~~ hearing, and that the mayor has appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing ~~their each commissioner’s~~ right to office, the date and place of induction into and taking oath of office, and that ~~they the commissioner’s~~ desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name ~~which that~~ is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.



(2) The application ~~shall~~ *must* be subscribed and sworn to by each of ~~said the~~ *the* commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that ~~he the officer~~ *he* personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore ~~thereto to the application~~ *to the application* in the officer's presence."

**Section 620.** Section 7-15-4410, MCA, is amended to read:

**"7-15-4410. Processing of application by secretary of state.** (1) The secretary of state shall examine the application, and if ~~he finds that~~ the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, ~~he the secretary of state~~ *the secretary of state* shall receive and file it and shall record it in an appropriate book of record in ~~his the secretary of state's~~ *the secretary of state's* office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the ~~same~~ *certificate* with the application."

**Section 621.** Section 7-15-4433, MCA, is amended to read:

**"7-15-4433. Compensation of commissioners.** A commissioner ~~shall~~ *may not* receive ~~no~~ compensation for ~~his~~ *his* services, but ~~he shall be~~ *is* entitled to the necessary expenses, including traveling expenses, incurred in the discharge of ~~his~~ *his* authority duties."

**Section 622.** Section 7-15-4436, MCA, is amended to read:

**"7-15-4436. Removal of commissioners.** The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner ~~shall have~~ *has* been given a copy of the charges, ~~against him~~ *against him* (which may be made by the mayor), at least 10 days prior to the hearing ~~thereon on the charges~~ *thereon on the charges* and *has* had an opportunity to be heard in person or by counsel."

**Section 623.** Section 7-15-4437, MCA, is amended to read:

**"7-15-4437. Right of obligee of authority to request removal of commissioner.** (1) ~~Any~~ *An* obligee of the authority may file with the mayor written charges that the authority is willfully violating any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of ~~such the~~ *such the* charges at least 10 days prior to the hearing ~~thereon on the charges~~ *thereon on the charges* and *shall provide* an opportunity to be heard in person or by counsel. ~~and~~ *The mayor* shall within 15 days after receipt of ~~such the~~ *such the* charges remove ~~any a~~ *a* commissioner of the authority who ~~shall have been~~ *is* found to have acquiesced in any ~~such~~ *such* willful violation.

(2) A commissioner ~~shall be deemed~~ *is considered* to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if, before a hearing is held on the charges ~~against him~~ *against him*, ~~he shall~~ *the commissioner does not* have ~~filed~~ *filed* a written statement with the authority of ~~his~~ *his* objections to or lack of participation in ~~such the~~ *such the* violation."

**Section 624.** Section 7-15-4439, MCA, is amended to read:

**"7-15-4439. Conduct of business.** (1) A simple majority of commissioners constitutes a quorum.

(2) When the office of the first ~~chairman~~ *presiding officer* of the authority becomes vacant, the authority shall select a ~~chairman~~ *presiding officer* from among its members. An authority shall select from among its members a ~~vice-chairman~~ *vice presiding officer*.

(3) An authority may:

(a) employ a secretary, (who ~~shall be~~ *is* executive director), technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as that~~ it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for legal services ~~as that~~ it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees powers or duties ~~as that~~ it may consider proper.”

**Section 625.** Section 7-15-4528, MCA, is amended to read:

**“7-15-4528. Use of bond trustee.** In connection with the issuance of bonds ~~and/or~~ or the incurring of any obligation under a lease and in order to secure the payment of the bonds ~~and/or~~ or obligations, the authority may:

(1) vest in a trustee the right to enforce any covenant made to secure the payment of the bonds ~~and/or~~ or obligations;

(2) provide for the powers and duties of the trustee and limit ~~his~~ *the trustee’s* liabilities; and

(3) provide the terms and conditions upon which the trustee or a designated proportion of the holders of bonds may enforce any covenant.”

**Section 626.** Section 7-15-4530, MCA, is amended to read:

**“7-15-4530. Special remedies of an obligee resulting from mortgage or trust indenture.** (1) ~~Any An~~ authority ~~shall have power~~ *may* by its trust indenture, mortgage, lease, or other contract ~~to confer upon any an~~ obligee holding or representing a specified amount in bonds, leases, or other obligations the right, upon the happening of an event of default as defined in ~~such the~~ instrument:

(a) by suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of ~~any a~~ housing project of the authority or any part ~~or parts thereof of a project~~;

(b) by suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners ~~thereof~~ to account as if it and they were the trustees of an express trust.

(2) If a receiver is appointed pursuant to subsection (1)(a), ~~he the receiver~~ may enter and take possession of ~~such the~~ housing project or any part of ~~parts thereof the project, and may~~ operate and maintain the ~~same project, and may~~ collect and receive all fees, rents, ~~revenues~~ *revenue*, or other charges ~~thereafter arising therefrom from the project in the same manner as the authority itself might do. and shall~~ *The receiver shall keep such the* money in a separate account or accounts and apply the ~~same money~~ in accordance with the obligations of the authority as the court ~~shall direct~~ *directs.*”

**Section 627.** Section 7-16-2312, MCA, is amended to read:

**“7-16-2312. County park superintendent.** The board of park commissioners ~~shall have the power to may~~ employ a park superintendent, who

may also be the secretary of the park board and who shall attend each regular meeting of the ~~said~~ board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which ~~he~~ *the superintendent* has supervision. The duties of the park superintendent ~~shall~~ *must* be of a managerial capacity.”

**Section 628.** Section 7-16-2325, MCA, is amended to read:

**“7-16-2325. Power of park board to employ persons and to make contracts.** (1) A county park board, ~~in addition to powers and duties now given under law, shall have the following powers and duties may:~~

(a) ~~to~~ employ and discharge ~~workmen~~ *workers*, laborers, engineers, foresters, and others and ~~to~~ fix their compensation;

(b) ~~to~~ make all contracts necessary or convenient for carrying out any ~~and all~~ the powers conferred and duties enjoined upon ~~said~~ *the* board by this part.

(2) All contracts made by ~~said~~ *the* board ~~shall~~ *must* be in the name of the county and ~~shall~~ *must* be signed by the president or, in ~~his~~ *the president's* absence, by the ~~vice-president~~ *vice president* of ~~said~~ *the* board, ~~or upon~~. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with ~~due~~ notice and report being made to the board of county commissioners, ~~such~~ *the* contracts may be signed by the ~~chairman~~ *presiding officer* of the board of county commissioners and attested by the county clerk and recorder.

(3) ~~No~~ *An* order or resolution authorizing the making of ~~any a~~ contract ~~shall~~ *may not* be passed or adopted except by a ye and nay vote, which ~~vote~~ *shall* *must* be recorded in full in the minutes of the secretary.”

**Section 629.** Section 7-16-2330, MCA, is amended to read:

**“7-16-2330. Allowance of claims.** (1) Subject to the provisions of subsection (2), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which ~~shall have been~~ *has been* incurred by ~~said~~ *the* board.

(2) ~~No~~ *A* claim ~~shall~~ *may not* be audited or paid until an itemized account of ~~such~~ *the* claim, in writing and signed by the claimant or ~~his or its~~ *the claimant's* authorized agent, ~~shall have~~ *has* been filed in the office of the secretary of ~~said~~ *the* board.

(3) ~~No~~ *An* order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of \$25 ~~shall~~ *may not* be passed or adopted except by a ye and nay vote, which ~~vote~~ *shall* *must* be recorded in full in the minutes of the secretary.”

**Section 630.** Section 7-16-2331, MCA, is amended to read:

**“7-16-2331. Disbursement of money.** All money paid out by the park commissioners under the provisions of this part ~~shall~~ *must* be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president or, in ~~his~~ *the president's* absence, by the ~~vice-president~~ *vice president* of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with ~~due~~ notice and report ~~being~~ made to the board of county commissioners, ~~authorized~~ payments ~~so~~ *authorized* may be made by warrant drawn upon the

county treasury, signed by the ~~chairman~~ *presiding officer* of the board of county commissioners and countersigned by the county clerk and recorder.”

**Section 631.** Section 7-21-2102, MCA, is amended to read:

**“7-21-2102. Procedure to supply license blanks.** (1) The county clerk *and recorder* shall prepare and have printed ~~such~~ blank licenses as may be required, and after affixing ~~his the clerk’s~~ official seal ~~thereto to the licenses~~, ~~he the clerk~~ shall deliver the ~~same~~ licenses to the county treasurer. At the time of ~~such~~ delivery, ~~he the clerk~~ shall charge the county treasurer ~~therewith~~ *with the licenses* by appropriate entry in ~~his the clerk’s~~ records showing the amount, numbers, and classes of licenses ~~so~~ furnished.

(2) As licenses are issued and accounted for by the county treasurer, the county clerk *and recorder* shall credit ~~such the~~ account with all licenses ~~so~~ issued and accounted for, so that the account will at all times show the number of licenses furnished to the treasurer, their numbers, the number issued or canceled, and the number remaining in the hands of the county treasurer.

(3) On the first Monday in each month, the county treasurer ~~must shall~~ return to the county clerk *and recorder* all licenses unsold and show that ~~he the treasurer~~ has paid into the county treasury all money collected for licenses sold during the preceding month.”

**Section 632.** Section 7-21-2103, MCA, is amended to read:

**“7-21-2103. Determination of persons required to obtain licenses — classes of licenses.** (1) The county treasurer ~~must shall~~ make diligent inquiry as to all persons in ~~his the county~~ *liable required* to pay a license fee as provided in this part.

(2) Whenever the licenses are divided into classes, the county treasurer ~~must shall~~ require each person to state, under oath or affirmation, the probable amount of business ~~which he that the person~~, the firm of which ~~he the person~~ is a member or for which ~~he the person~~ is an agent or attorney, or the association or corporation of which ~~he the person~~ is the president, secretary, or managing agent will do in the succeeding 3 months. ~~Thereupon such~~ *The person, agent, president, secretary, or other officer must shall* procure a license from the county treasurer for the term desired and the proper class. In all cases ~~where in which~~ an underestimate has been made by the party applying, the party making the underestimate or the company ~~he that the party~~ represented is required to pay double the sum otherwise required for a license for the next quarter.”

**Section 633.** Section 7-21-2111, MCA, is amended to read:

**“7-21-2111. General license requirements.** (1) A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the ~~same~~ *business or occupation*.

(2) The license authorizes the party ~~obtaining the same~~ to transact the business described in ~~such the~~ license in ~~his the~~ town, city, or particular locality in the county.

(3) Separate licenses must be obtained for each branch establishment or separate house of business located in the same county.”

**Section 634.** Section 7-21-2115, MCA, is amended to read:

**“7-21-2115. Liability of county treasurer for licensing violations.** Upon ~~the~~ notification of the treasurer as provided in 7-21-2114, the treasurer

~~shall be~~ is personally liable for ~~such~~ *the* license or increase unless ~~he~~ *the treasurer* promptly proceeds under 7-21-2104 or 7-21-2116 to collect the ~~same~~ license fee.”

**Section 635.** Section 7-21-2117, MCA, is amended to read:

**“7-21-2117. Defenses in actions related to licensing violations.** Upon the trial of any action authorized by this part, the defendant is ~~deemed considered~~ not to have procured the proper license unless ~~he~~ *the defendant* either produces it or proves that ~~he did procure it,~~ *the license was procured.* ~~but~~ *However,* ~~the defendant~~ may plead in bar of the action a recovery against ~~him~~ and the payment by ~~him~~ *the defendant* in a civil action of the proper license tax, together with damages and costs.”

**Section 636.** Section 7-21-2120, MCA, is amended to read:

**“7-21-2120. Regulation of pawnbrokers — definition.** (1) The board of county commissioners may, by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107, regulate the activities of pawnbrokers located outside the boundaries of an incorporated city or town. The regulations may include but are not limited to:

- (a) standards for recordkeeping for all pawns, purchases, and sales;
- (b) a provision for a waiting period to allow investigators time to examine merchandise;
- (c) required forms of identification needed by persons pledging or selling articles; and
- (d) penalty provisions for pawnbrokers who fail to comply with the regulations.

(2) For the purpose of this section, “pawnbroker” means a person engaged in conducting or carrying on the business of loaning money ~~for himself on the person’s own behalf~~ or for another, upon personal property, personal security, pawns, or pledges, or engaged in the business of purchasing articles of personal property and reselling or agreeing to resell the articles to the vendors or their assigns at prices agreed on at or before the time of purchase.”

**Section 637.** Section 7-21-2305, MCA, is amended to read:

**“7-21-2305. Application for itinerant vendor license.** (1) ~~Every~~ An itinerant vendor desiring to do business in any county of this state ~~must shall,~~ before commencing ~~such~~ business, file with the county treasurer of ~~such~~ *the* county, on a form to be provided by ~~such~~ *the* treasurer, an application in writing, subscribed and sworn to by ~~such~~ *the* applicant before an officer in this state authorized to take oaths.

- (2) The application ~~shall~~ *must* set forth:
  - (a) *the* name of *the* applicant;
  - (b) ~~his~~ *the applicant’s* place of permanent residence;
  - (c) ~~his~~ *the applicant’s* local headquarters, if any;
  - (d) *the* time of ~~his~~ *the applicant’s* arrival in the county;
  - (e) *the* county from which *the* last license, if any, *was* received;
  - (f) whether *the applicant is* acting as principal, agent, or employee;
  - (g) if acting as agent or employee, the name and place of business of ~~his~~ *the* principal or employer;

(h) a brief descriptive list of articles to be offered for sale or services to be performed; and

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of ~~such~~ the agency must accompany the application as part of the application.

(4) At the time of filing the application, ~~such~~ the itinerant vendor ~~must~~ shall accompany the application with the sum specified in 7-21-2303 as a license fee."

**Section 638.** Section 7-21-2306, MCA, is amended to read:

**"7-21-2306. Bond required if deposit taken on orders for future delivery.** (1) ~~Every~~ An application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees ~~thereon on the orders~~ under the terms of 7-21-2301 through 7-21-2305 ~~shall~~ must be accompanied by a bond in the sum of \$250 payable to ~~said~~ the county treasurer.

(2) (a) The bond ~~shall~~ must be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of ~~said~~ the county.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond of equal amount.

(3) The bond ~~shall~~ must be approved by ~~said~~ the county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of ~~such~~ the order or, failing ~~therein~~ delivery, that the money advanced by ~~his~~ the customers will be refunded.

(4) ~~Such~~ The bond ~~shall~~ must remain in full force and effect for a period of 6 months after the expiration of ~~any~~ ~~such~~ a license and ~~shall~~ must be held to ~~assure~~ ensure only business transacted under the authority of the license issued pursuant to the application ~~which~~ ~~such~~ that the bond accompanied."

**Section 639.** Section 7-21-2307, MCA, is amended to read:

**"7-21-2307. Right of aggrieved purchaser.** ~~Any~~ A person aggrieved by the action or misrepresentation of ~~any~~ ~~such~~ an itinerant vendor ~~shall~~ ~~have~~ has a right of action on the bond for the recovery of ~~his~~ the person's money advanced or damages and costs."

**Section 640.** Section 7-21-2308, MCA, is amended to read:

**"7-21-2308. Processing of application — issuance of license.** (1) Upon filing of the application prescribed in 7-21-2305 or the filing of ~~such~~ the application and the bond prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in ~~such~~ the application in the county in which ~~such~~ the license is ~~so~~ issued for a period of 90 days from the date of ~~such~~ the license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file ~~such~~ the application with the county clerk and recorder of ~~his~~ that county. The county clerk and recorder shall file the ~~same~~ application in ~~his~~ the clerk's office and keep an appropriate index ~~thereof~~ which shall show of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which ~~said~~ the application may be found."

**Section 641.** Section 7-21-2309, MCA, is amended to read:

**“7-21-2309. License to be displayed upon demand.** (1) ~~Every such An~~ itinerant vendor doing business under the provisions of this part ~~must shall~~ upon the demand of any person exhibit ~~his the~~ vendor’s license and permit the same license to ~~then and there~~ be read *at the time* by the person making ~~such the~~ demand.

(2) ~~Any such An~~ itinerant vendor who shall willfully ~~refuse refuses~~ or ~~fail fails~~ to exhibit ~~his the~~ license as ~~above~~ provided in subsection (1) is guilty of a misdemeanor and shall be fined not less than \$100 or more than \$250 for each offense.”

**Section 642.** Section 7-21-2401, MCA, is amended to read:

**“7-21-2401. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Temporary premises” means ~~any a~~ hotel, roominghouse, storeroom, building or part of ~~any a~~ building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place, *that is* temporarily occupied ~~for such business as described in subsection (2) by a transient retail merchant.~~

(2) “Transient retail merchant” means ~~every a~~ person, firm, or corporation *that*, acting ~~for himself or itself on its own behalf~~ or representing any other person, firm, or corporation, ~~who or which~~ brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and ~~who or which that~~ solicits, sells, offers to sell, or exhibits for sale ~~such the~~ stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail.”

**Section 643.** Section 7-21-2406, MCA, is amended to read:

**“7-21-2406. Application for transient retail merchant license.** (1) ~~Every A~~ transient retail merchant desiring to do business in any county of this state ~~must shall~~, before commencing ~~such~~ business, file with the county treasurer of ~~such the~~ county, on a form to be provided by ~~such the~~ treasurer, an application in writing, subscribed and sworn to by ~~such the~~ applicant before an officer in this state authorized to take oaths.

(2) The application ~~shall must~~ set forth:

- (a) *the* name of *the* applicant;
- (b) ~~his the~~ applicant’s place of permanent residence;
- (c) ~~his the~~ applicant’s local headquarters, if any;
- (d) *the* time of ~~his the~~ applicant’s arrival in the county;
- (e) *the* county from which *the* last license, if any, *was* received;
- (f) whether *the* applicant is acting as principal, agent, or employee;
- (g) if acting as agent or employee, the name and place of business of ~~his the~~ applicant’s principal or employer;
- (h) a brief descriptive list of articles to be offered for sale or services to be performed;
- (i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery; *and*
- (j) the number of weeks for which *the* license is requested.

(3) If the applicant is acting as an agent, the principal's acknowledgment of ~~such the~~ agency must accompany the application as part of the application.

(4) At the time of filing the application, ~~such the~~ transient retail merchant ~~must shall~~ accompany the application with the sum specified in 7-21-2404 as a license fee, except as provided in 7-21-2407."

**Section 644.** Section 7-21-2408, MCA, is amended to read:

**"7-21-2408. Right of aggrieved purchaser.** ~~Any~~ A person aggrieved by any action or misrepresentation of ~~any such a~~ transient retail merchant ~~shall have has~~ a right of action on the bond provided for in 7-21-2407 for the recovery of ~~his~~ money advanced or damages and costs."

**Section 645.** Section 7-21-2409, MCA, is amended to read:

**"7-21-2409. Processing of application — issuance of license.** (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in ~~such the~~ application in the county in which ~~such the~~ license is ~~so~~ issued for the period for which ~~such the~~ license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in ~~such the~~ application in the county in which ~~such the~~ license is ~~so~~ issued for a period of 1 year from the date of ~~such the~~ license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration ~~thereof of the license~~ and shall immediately file ~~such the~~ application with the county clerk and recorder of ~~his the~~ county. The county clerk and recorder shall file the ~~same application in his the clerk's~~ office and keep an appropriate index ~~thereof which shall show of the applications that shows~~ the date filed, the name of ~~the~~ applicant, and an appropriate reference to the file number by which ~~said the~~ application may be found."

**Section 646.** Section 7-21-2410, MCA, is amended to read:

**"7-21-2410. License to be displayed in place of business.** (1) ~~Every~~ A transient retail merchant doing business under the provisions of this part shall at all times keep ~~said the~~ license conspicuously posted in ~~said the~~ place of business.

(2) ~~Any such~~ A transient retail merchant who ~~shall fail~~ fails to post and keep posted ~~his the~~ license as provided ~~above in subsection (1)~~ is guilty of a misdemeanor and shall be fined not less than \$10 or more than \$25 for each offense."

**Section 647.** Section 7-21-2502, MCA, is amended to read:

**"7-21-2502. Scope of part.** (1) ~~Nothing contained in this~~ *This part is not* intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) ~~Nothing in this part shall~~ *This part may not* be construed so as in any manner to impair, abridge, or interfere with the right of a grower or producer of farm products to dispose of ~~such~~ products grown or produced by ~~him the person~~."

**Section 648.** Section 7-21-2505, MCA, is amended to read:



**“7-21-2505. Application for huckster license.** (1) Every A huckster desiring to do business in any county of this state ~~must~~ *shall*, before commencing ~~such~~ business, file with the county treasurer of ~~such~~ the county, on a form to be provided by ~~such~~ the treasurer, an application in writing.

(2) The application ~~shall~~ *must* set forth:

(a) *the* name of *the* applicant;

(b) ~~his~~ *the applicant's* place of permanent residence;

(c) whether *the applicant is* acting as principal, agent, or employee; and

(d) if acting as agent or employee, the name and place of business of ~~his~~ *the* principal or employer.

(3) At the time of filing the application, ~~such~~ *the* huckster ~~must~~ *shall* accompany the application with the sum specified in 7-21-2503 as a license fee.”

**Section 649.** Section 7-21-2506, MCA, is amended to read:

**“7-21-2506. Processing of application — issuance of license.** (1) Upon filing of the application specified in 7-21-2505 and upon the payment to the county treasurer of the sum specified in 7-21-2503, the county treasurer shall issue and deliver to the applicant a license to carry on the business of a huckster for a period of 6 months from the date of ~~such~~ *the* license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file ~~such~~ *the* application with the county clerk and recorder of ~~his~~ *the* county. The county clerk and recorder shall file the ~~same~~ *application in his* ~~the clerk's~~ office and keep an appropriate index thereof which shall show *of the applications that shows* the date filed, the name of the applicant, and an appropriate reference to the file number by which ~~said~~ *the* application may be found.”

**Section 650.** Section 7-21-2507, MCA, is amended to read:

**“7-21-2507. License to be displayed upon demand.** (1) Every A ~~such~~ huckster doing business under the provisions of this part ~~must~~ *shall*, upon demand of any interested person, exhibit ~~his~~ *the huckster's* license and permit the ~~same~~ *the license* to ~~then and there~~ be read *at that time* by the person making ~~such~~ *the* demand.

(2) ~~Any such~~ A huckster who ~~shall refuse~~ *refuses* or ~~fail~~ *fails* to exhibit ~~his~~ *the* license as provided ~~above~~ *in subsection (1)* is guilty of a misdemeanor and shall be fined not less than \$10 or more than \$25.”

**Section 651.** Section 7-21-3104, MCA, is amended to read:

**“7-21-3104. Appointment of public weigher.** (1) The board of county commissioners shall appoint, at each place where public scales are established by them, a public weigher who ~~shall have~~ *has* the custody and care of ~~such~~ *the* property.

(2) ~~Such~~ A public weigher ~~shall~~ *must* be governed by ~~such~~ rules ~~as that~~ may be from time to time prescribed or adopted by the board, and ~~he~~ *the weigher* may be removed at any time by ~~such~~ *the* board.”

**Section 652.** Section 7-21-3105, MCA, is amended to read:

**“7-21-3105. Bond of public weigher.** A public weigher appointed pursuant to 7-21-3104 shall give a bond to the county in the sum of \$500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to ~~his~~ *the weigher's* trust in office.”

**Section 653.** Section 7-21-3106, MCA, is amended to read:

**“7-21-3106. Record of weighing.** (1) ~~It shall be the duty of each~~ *Each* public weigher ~~to shall~~ keep a stub record of all weighing done by ~~him that~~ *weigher*. The record and the receipt issued by ~~such the~~ public weigher ~~shall must~~ show for whom property was weighed and the character and kind ~~thereof of~~ *property* and ~~shall constitute~~ *is* prima facie evidence of the facts ~~therein~~ contained *in the record and receipt*.

(2) All ~~such~~ stub records or other records ~~which that~~ the county commissioners may require ~~him the~~ *public weigher* to keep ~~shall must~~ at all times be open to public inspection during business hours, between 7 a.m. and 6 p.m. of any day, except Sundays and legal holidays.

(3) ~~Such~~ A public weigher shall file a sworn statement with the ~~county clerk~~ and recorder of the county, as prescribed by the county commissioners ~~thereof~~. The statement ~~shall must~~ show the date and character or kind of property weighed, for whom *it was* weighed, and a complete statement of all fees collected.”

**Section 654.** Section 7-21-3107, MCA, is amended to read:

**“7-21-3107. Fee for weighing.** ~~Such~~ A public weigher ~~shall may not~~ receive ~~not to exceed more than~~ 10 cents for each receipt issued ~~by him.~~”

**Section 655.** Section 7-21-3108, MCA, is amended to read:

**“7-21-3108. Misconduct by public weigher.** ~~Any~~ A public weigher under the provisions of this part who ~~shall make~~ *makes* any false or fraudulent receipt of any weighing ~~done by him or shall be guilty of any collusion~~ *who conspires* with any other person ~~or persons~~ for the purpose of deceiving any person ~~or persons~~ *in* with regard to the correctness of weights or who ~~shall fail~~ *fails* to comply with the requirements of 7-21-3104(2) or 7-21-3107 is, *upon conviction*, guilty of a misdemeanor.”

**Section 656.** Section 7-21-3211, MCA, is amended to read:

**“7-21-3211. Employment of stock inspector.** (1) Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in ~~such the~~ county and in ~~such a~~ manner that the public officers of the county are not in *a* position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector.

(2) Whenever ~~such~~ a stock inspector is ~~so~~ employed, the employment ~~shall be~~ *is* only for the case or cases then under investigation. During the existence of ~~such the~~ appointment, ~~he shall be the~~ *inspector is* vested with the same police power and authority as the sheriff, within the limitation of the purposes for which ~~he the~~ *inspector* is appointed.”

**Section 657.** Section 7-21-3212, MCA, is amended to read:

**“7-21-3212. Compensation of stock inspector.** (1) Whenever ~~such~~ a stock inspector is ~~so~~ employed, ~~his the~~ *inspector's* compensation ~~shall must~~ be at ~~the a~~ rate of not to exceed the sum of \$7.50 ~~per a~~ day and necessary expenses for the time actually engaged in ~~such the~~ work, and ~~he shall the~~ *inspector must* be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is so employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of such the crime, such the inspector shall is not be entitled to any part of said the reward.”

**Section 658.** Section 7-21-3213, MCA, is amended to read:

**“7-21-3213. Confidentiality of appointment of stock inspector.** The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall may not be made public until after the investigation of the crime or crimes by said the inspector is completed, and any officer who divulges the name of the stock inspector employed or the purpose of his employment during such the period shall be is guilty of a misdemeanor.”

**Section 659.** Section 7-21-3303, MCA, is amended to read:

**“7-21-3303. Opening of public market.** The boards A board of county commissioners of the counties of the state availing themselves of the provisions of this part must shall, as soon as the necessary lands and premises necessary therefor have been acquired, cause to be opened and maintained at the county seats of their respective counties seat and in the quarters so acquired an open public market for the benefit of the farmers, gardeners, and actual producers of farm products;. The market is for the sale by the producers thereof direct directly to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.”

**Section 660.** Section 7-21-3307, MCA, is amended to read:

**“7-21-3307. Gross proceeds charge.** (1) Every A producer of products availing himself or herself of the use of using the marketplace established under the provisions of this part shall pay or cause to be paid, at the close of each day’s business, to the market master thereof a charge of 5% of his or her the person’s gross sales.

(2) The funds thus collected by the market master shall must be turned in to the county treasury to the credit of the county market fund and shall must be used by the county treasurer toward the payment of the expenses of operating and maintaining such the public market.”

**Section 661.** Section 7-21-3435, MCA, is amended to read:

**“7-21-3435. Management of fair district money — district fair fund.** (1) The funds available to a district fair shall must, on the first Monday in August or as soon thereafter after that date as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held. and The funds must be credited to a fund to be known as the district fair fund and shall must be held and paid out in the same manner as the county fair fund, except that it shall the fund must be paid out on district fair board warrants signed by the chairman presiding officer or the vice-chairman vice presiding officer and the secretary of the district fair board.

(2) The treasurer of the county in which the district fair will be is held shall carry the money received from the various counties in the district in the regular county fair fund in the same manner as regular county fair money, payable, however, only on district fair warrants.”

**Section 662.** Section 7-21-3453, MCA, is amended to read:

**“7-21-3453. Term of office.** The term of office of each commissioner must coincide with ~~his~~ *the commissioner’s* term of office on the county fair commission or the county building commission.”

**Section 663.** Section 7-22-2214, MCA, is amended to read:

**“7-22-2214. Hearing — decision.** (1) On the date set for the hearing, the governing body shall hear comments on the proposed district. If objections have been filed by owners of at least 51% of the land within the district, the governing body shall deny the petition request and may not create the district. Prior to creating a district, the governing body shall make a finding that creation of the district is in the best interests of the district lands and residents. The decision on whether to grant or deny the petition request ~~shall~~ *must* be made within 10 days of the hearing.

(2) The decision ~~is to~~ *must* be made by an order recorded in the minutes of the governing body. If the district is to be created, the order ~~shall~~ *must* state the name of the district, describe the district boundaries, and provide any other information needed to describe the land included within the district.

(3) A landowner within the proposed district after the initial boundaries have been established may, by petitioning the board of county commissioners, have all or a portion of the lands owned by ~~himself~~ *the person* removed from consideration for inclusion within the district. ~~This~~ *However, this* landowner ~~must, however,~~ *shall* agree in writing to control rodents on ~~his~~ *that* land within a 250-yard buffer zone of the district boundary.”

**Section 664.** Section 7-22-2225, MCA, is amended to read:

**“7-22-2225. Reimbursement of fund.** (1) Whenever the board has undertaken rodent control pursuant to 7-22-2224, the landowner shall reimburse the fund for the expenses related to rodent control on ~~his~~ *the person’s* land. The board may, by written contract with the landowner, agree to extend the reimbursement over a period not to exceed 5 years.

(2) The agreement may provide for the reimbursement payments to be collected with property taxes, and in this case, the board shall inform the county clerk *and recorder* of the lands to be charged and the amount to be placed on the tax notice. Upon receipt of the payment, the county clerk *and recorder* shall deposit it in the fund.”

**Section 665.** Section 7-22-2401, MCA, is amended to read:

**“7-22-2401. Definitions.** In this part the following definitions apply:

(1) “Board” means the mosquito control board for ~~any~~ *a* district created under this part.

(2) “Commissioners” means the board of county commissioners of ~~any~~ *a* county.

(3) “District” means ~~any~~ *a* mosquito control district created under the provisions of this part.

(4) “Mosquito” means any insect belonging to the family Culicidae of the order Diptera.

(5) “Mosquito pest” means any group of mosquitoes ~~which annoy man that annoys humans~~ or ~~his~~ domestic animals or ~~transmit~~ *transmits* any disease of ~~man~~ *humans* or of ~~his~~ domestic animals.”

**Section 666.** Section 7-22-2410, MCA, is amended to read:

**“7-22-2410. Protest to creation of district.** (1) At the hearing provided for in 7-22-2403 or at any time following the first publication of notice of ~~such the~~ hearing until the time of ~~said the~~ hearing, any qualified elector or an owner of property within the proposed district may file his written objections to the creation of the district. ~~Such~~ *The objections shall must* be delivered to the county clerk, who shall endorse ~~thereon on the objections~~ the date of its receipt ~~by him~~.

(2) If 51% or more of the qualified electors or of the owners of property within the boundaries of the proposed district file their written objections to the creation of ~~such the~~ district, the commissioners ~~shall may~~ not proceed with the creation of ~~such the~~ district.

(3) If as the result of objections filed the commissioners in their discretion determine ~~the that there is a question in doubt as to~~ whether or not the creation of a district is ~~to in~~ the best interest of an area and the residents ~~therein in the area~~, the commissioners may cause the issue to be determined by referendum at the next regular election.”

**Section 667.** Section 7-22-2434, MCA, is amended to read:

**“7-22-2434. Disposition of fines, bonds, and penalties.** All fines, forfeited bonds, and penalties collected under the provisions of this part, except those collected by a justice’s court, ~~shall must~~ be paid to the county treasurer of each county and ~~placed by him deposited~~ to the credit of the mosquito control fund.”

**Section 668.** Section 7-23-101, MCA, is amended to read:

**“7-23-101. Dog collar and license tag required.** It ~~shall be~~ *is* unlawful, ~~where this part, when part 21, and 7-23-4103, and this part apply,~~ for any person to own, harbor, or keep any dog over the age of 5 months or to permit ~~such a~~ dog owned, harbored, or controlled by ~~him the person~~ to run at large unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; ~~provided, however, that it shall be~~ *It is* lawful to remove ~~such the~~ collar and license tag when ~~such the~~ dog is under the immediate control of its owner or ~~his the owner’s~~ agent.”

**Section 669.** Section 7-23-102, MCA, is amended to read:

**“7-23-102. Seizure and impounding of dogs running at large without tag.** ~~Any~~ A dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of ~~this part, part 21, and 7-23-4103, and this part~~ may be seized and impounded by any sheriff, deputy sheriff, ~~policeman police officer,~~ game warden, county poundmaster, or other law enforcement officer.”

**Section 670.** Section 7-31-112, MCA, is amended to read:

**“7-31-112. Details relating to bonds.** (1) The bonds ~~to be~~ issued upon the conditions and under the provisions ~~aforsaid shall of this part must:~~

- (a) bear the date of their issuance;
- (b) be designated as sanitary coupon bonds of the county, city, or town issuing the ~~same~~ bonds;
- (c) be of a denomination not less than \$500 or more than \$1,000 each;
- (d) be payable at ~~such a place in New York City or elsewhere,~~ at the discretion of the board or council issuing the ~~same~~ bonds;

(e) bear interest as provided in 17-5-102, payable 30 years after the date ~~thereof of issuance~~, with the privilege of paying the ~~same interest~~ at any time after 5 years from ~~such that date~~, ~~which~~ *The interest shall be payable semiannually at the place whereat where the principal is payable, and for which interest coupons shall must be attached to said the bonds.*

(2) If ~~said the bonds~~ and coupons are issued by ~~any a county~~, they ~~shall must~~ be signed by the ~~chairman~~ *presiding officer* of the board of county commissioners of ~~such that county~~ and attested ~~to~~ by the ~~county clerk thereof and recorder~~ and ~~his the clerk's seal must be attached thereto to the bonds and coupons~~. If the bonds and coupons are issued by any incorporated city or town, ~~the same shall they must~~ be signed by the mayor and attested to by the city or town clerk and the ~~clerk's seal thereof must be attached to the bonds and coupons~~.”

**Section 671.** Section 7-31-202, MCA, is amended to read:

**“7-31-202. Qualifications for public safety communications officers.**

To be appointed a public safety communications officer, a person:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (4) may not have been convicted of a crime for which ~~he~~ *the person* could have been imprisoned in a federal or state penitentiary;
- (5) must be of good moral character, as determined by a thorough background investigation;
- (6) must be a high school graduate or have passed the general ~~education~~ *educational* development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and
- (7) ~~shall must~~ meet any additional qualifications established by the board.”

**Section 672.** Section 7-31-2101, MCA, is amended to read:

**“7-31-2101. Authorization to transfer funds for emergency relief.**

Whenever the governor ~~shall issue~~ *issues* a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants ~~thereof~~ caused by famine, destitution, conflagration, or other public calamity, the board of county commissioners of ~~such the county is authorized to~~ *may* transfer to the proper fund to be used for purposes of ~~such relief~~ any money in any other fund or funds of the county, but ~~no~~ money belonging to any bond sinking or interest fund or any school fund ~~must may not~~ be so transferred. The governor shall in ~~his~~ *the* proclamation state the facts upon which ~~such the~~ emergency is declared and shall specifically limit the time during which ~~such the~~ transfers may be made.”

**Section 673.** Section 7-31-4102, MCA, is amended to read:

**“7-31-4102. Sales of poisons and opium.** (1) The city or town council has power to regulate the ~~sales sale~~ of poisons and to punish any person for selling or using opium or any *opium* preparation ~~thereof~~, for having ~~the same opium or any opium preparation~~ or any implement to be used in smoking it *opium* in ~~his~~ *the person's* possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where ~~the same opium or any opium preparation~~ is smoked or used.

(2) Druggists may sell opium or any *opium* preparation thereof, subject to the general laws of the state in relation thereto to their sale.”

**Section 674.** Section 7-31-4206, MCA, is amended to read:

**“7-31-4206. Procedure to maintain open ditch.** (1) If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, ~~he~~ *the person* shall notify the city or town before the expiration of the 60-day period that ~~he~~ *the person* wishes to continue the use of ~~such~~ *the* water within the city or town and that ~~he~~ *the person*, individually or with others, will provide ~~such~~ protective devices as ordered by the city or town.

(2) If ~~such~~ notice is given, the person or persons claiming ~~such~~ *the water* right or rights ~~shall have~~ *has* a period not to exceed 6 months to remove the public nuisance in the manner ordered by the city or town.

(3) If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided or if it does not meet specifications required by the city or town, the city or town may designate ~~such~~ *the* ditch abandoned and order it closed or filled when the 6-month period ends.”

**Section 675.** Section 7-32-102, MCA, is amended to read:

**“7-32-102. Director of department of public safety.** The director of the department of public safety ~~shall be~~ *is* the sheriff, who may be elected or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. ~~A~~ *An appointed* director ~~so appointed~~ shall receive a majority of the votes of the public safety commission members voting on the question of ~~his~~ appointment.”

**Section 676.** Section 7-32-108, MCA, is amended to read:

**“7-32-108. Hearing procedure for employee discharged by an appointed director.** (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide ~~such~~ *the* employee *with* a written statement, subscribed and sworn to by the director, setting forth the cause or causes for the discharge or termination of employment.

(2) Within 30 days from the date of discharge or termination of ~~his~~ employment, ~~such~~ *the* employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee’s discharge or termination of employment. ~~Such~~ *The* employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings ~~in such cases~~, and the records ~~shall be~~ *are* a matter of public record. For the purpose of keeping a record of the proceedings ~~in such a case~~, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. ~~Such~~ *The* person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee’s discharge or termination of employment have been proven.

(4) The commission ~~shall have~~ *has* the power, in all cases ~~wherein~~ *in which* a majority of the commission members find the charges not proven, to reinstate any employee to the same position ~~he~~ *previously* held and at the same salary ~~he~~ received prior to discharge or termination of employment.

(5) In all cases ~~wherein in which~~ a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county ~~wherein in which~~ the employee was employed. ~~Such~~ The appeal must be initiated within 60 days of the ruling of the commission.”

**Section 677.** Section 7-32-110, MCA, is amended to read:

**“7-32-110. Reinstatement of discharged employee who prevails in district court.** ~~In the event that~~ If an employee prevails in an appeal to the district court, ~~he shall be~~ the employee is entitled to be reinstated to the same position ~~he previously~~ held and at the same salary ~~he~~ received prior to ~~his~~ discharge or termination by the director.”

**Section 678.** Section 7-32-115, MCA, is amended to read:

**“7-32-115. Work period in lieu of workweek — overtime compensation.** (1) (a) A department of public safety may establish a work period other than the workweek provided in 7-32-2111 or 39-3-405 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any employee who works in excess of ~~his~~ the employee’s regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by the board of county commissioners.”

**Section 679.** Section 7-32-122, MCA, is amended to read:

**“7-32-122. Appointment to three-member public safety commission.**

(1) Upon the creation of a three-member commission:

(a) one member ~~shall~~ must be appointed by the legislative body of the city or town;

(b) one ~~shall~~ member must be appointed by the board of county commissioners; and

(c) one ~~shall~~ member must be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of ~~his~~ appointment.

(3) Initially, one commission member shall serve a 4-year term and two commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of ~~his~~ the member’s term.”

**Section 680.** Section 7-32-123, MCA, is amended to read:

**“7-32-123. Appointment to five-member public safety commission.**

(1) Upon the creation of a five-member commission:

(a) two members ~~shall~~ must be appointed by the legislative body of the city or town;

(b) two ~~shall~~ members must be appointed by the board of county commissioners; and



(c) one ~~shall~~ *member must* be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a five-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of ~~his~~ *his appointment*.

(3) Initially, two commission members shall each serve a 4-year term and three commission members shall each serve a 2-year term. Each commission member ~~must~~ *shall* draw a lot to determine the length of ~~his~~ *the member's* term."

**Section 681.** Section 7-32-124, MCA, is amended to read:

**"7-32-124. Appointment to seven-member public safety commission.**

(1) Upon the creation of a seven-member commission:

(a) three members ~~shall~~ *must* be appointed by the legislative body of the city or town;

(b) three ~~shall~~ *members must* be appointed by the board of county commissioners; and

(c) one ~~shall~~ *member must* be appointed by the members of the board of county commissioners and the members of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a seven-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of ~~his~~ *his appointment*.

(3) Initially, three commission members shall each serve a 4-year term and four commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of ~~his~~ *the member's* term."

**Section 682.** Section 7-32-125, MCA, is amended to read:

**"7-32-125. Residency requirements for public safety commissioners.**

Each commission member shall reside at the time of ~~his~~ *his* appointment within the county if selected by the board of county commissioners or within the city or town by which appointed."

**Section 683.** Section 7-32-126, MCA, is amended to read:

**"7-32-126. Vacancies and succession.** (1) In case of a vacancy for any cause, a new member ~~shall~~ *must* be appointed in the same manner as the person ~~he~~ *replaces* ~~replaced~~. ~~A person so appointed~~ *The appointee* shall serve out the unexpired portion of the term of the person ~~he~~ *replaces* ~~replaced~~.

(2) The successor for a commission member whose term has expired ~~shall~~ *must* be appointed in the same manner used to appoint the commission member ~~he~~ *that the person* succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of ~~his~~ *a* term."

**Section 684.** Section 7-32-127, MCA, is amended to read:

**"7-32-127. Organization of public safety commission.** (1) Not later than 60 days after the commission is authorized, the members of the commission

shall meet and organize at a time ~~which shall~~ *that must* be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town ~~shall must~~ be designated by the commission to serve as temporary ~~chairman~~ *presiding officer*. As its first official act, the commission members shall select a ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer* from ~~their own number~~ *the members of the commission*.

(3) The ~~chairman~~ *presiding officer* of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the ~~chairman~~ *presiding officer*, the ~~vice-chairman~~ *vice presiding officer* shall preside over all meetings and hearings of the commission.”

**Section 685.** Section 7-32-128, MCA, is amended to read:

**“7-32-128. Meetings.** Meetings of the commission ~~shall must~~ be held upon call of the ~~chairman~~ *presiding officer*, the ~~vice-chairman~~ *vice presiding officer* in the absence or inability of the ~~chairman~~ *presiding officer*, or a majority of the commission members. Hearings in all cases involving employee discharge or termination ~~shall must~~ be held upon request of ~~any~~ *the* employee so discharged or terminated.”

**Section 686.** Section 7-32-213, MCA, is amended to read:

**“7-32-213. Qualifications for appointment as reserve officer.** To be appointed a reserve officer, a person ~~must~~:

(1) *must* have resided in the state continuously for at least 1 year prior to the appointment and in the county where ~~such~~ *the* appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) *must* be a citizen of the United States;

(3) *must* be at least 18 years of age;

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

(5) *may* not have been convicted of a crime for which ~~he~~ *the person* could have been imprisoned in a federal penitentiary or state prison;

(6) *must* be of good moral character as determined by a thorough background investigation;

(7) *must* be a graduate of an accredited high school or the equivalent;

(8) *must* be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) *must* possess a valid Montana driver’s license.”

**Section 687.** Section 7-32-301, MCA, is amended to read:

**“7-32-301. Residency requirements.** ~~No~~ A sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or ~~policemen~~ *police officers* in this state to preserve the public peace and prevent or quell public disturbance ~~shall hereafter~~ *may not* appoint as ~~such~~ *a* special deputy, marshal, or ~~policeman~~ *police officer* any person who ~~shall~~ *has* not ~~have~~ resided continuously in this state for a period of at least 1 year and in the county where ~~such~~ *the* appointment is made for a period of at least 6 months prior to the date of ~~said~~ appointment.”

**Section 688.** Section 7-32-302, MCA, is amended to read:

**“7-32-302. Waiver of residency requirements.** The person or body authorized by law to appoint special deputies, marshals, or ~~police~~ *police officers* may in its discretion waive residency requirements.”

**Section 689.** Section 7-32-2101, MCA, is amended to read:

**“7-32-2101. Vacancy in office of sheriff.** When the sheriff is committed under an execution or commitment for not paying over money received ~~by him~~ by virtue of ~~his~~ *the sheriff's* office and remains committed for 60 days, ~~his~~ *the* office is vacant.”

**Section 690.** Section 7-32-2104, MCA, is amended to read:

**“7-32-2104. Qualifications of deputy sheriff.** (1) ~~No A sheriff shall may not employ an individual as a deputy any individual who does not possess all the following qualifications sheriff unless the individual:~~

- (a) ~~is a graduate of an accredited high school or the equivalent thereof;~~
- (b) ~~is of good moral character;~~
- (c) ~~has never been convicted of a felony;~~
- (d) ~~has not within 5 years immediately preceding his the date of employment been affiliated in any manner with a subversive organization; and~~
- (e) ~~has been examined by a physician licensed to practice in the state of Montana within 30 days immediately preceding his the date of employment and has been pronounced in good physical condition.~~

(2) This section ~~shall is not be~~ applicable to any deputy sheriff whose term of employment commenced prior to March 2, 1967.”

**Section 691.** Section 7-32-2107, MCA, is amended to read:

**“7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment.** ~~Any A deputy sheriff now employed or who may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided in this part and only for one or more of the following specified causes:~~

- (1) ~~conviction of a felony subsequent to the commencement of such employment;~~
- (2) ~~willful disobedience of an order or orders given by the sheriff;~~
- (3) ~~drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;~~
- (4) ~~sleeping while on duty;~~
- (5) ~~incapacity materially affecting ability to perform official duties; or~~
- (6) ~~gross inefficiency in the performance of official duties.”~~

**Section 692.** Section 7-32-2108, MCA, is amended to read:

**“7-32-2108. Written notice of termination of employment required.** When a sheriff terminates the employment of a deputy, ~~he~~ *the sheriff* shall at the time of termination cause to be served upon ~~said the~~ deputy a statement in writing, subscribed and sworn to by the sheriff, setting forth the cause or causes for the discharge or termination of the deputy's employment.”

**Section 693.** Section 7-32-2121, MCA, is amended to read:

**“7-32-2121. Duties of sheriff.** The sheriff ~~must~~ *shall*:

- (1) preserve the peace;
- (2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;
- (3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections ~~which~~ *that* may come to ~~his~~ *the sheriff's* knowledge;
- (4) perform the duties of a humane officer within the county with reference to the protection of ~~dumb~~ animals;
- (5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;
- (6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;
- (7) take charge of and keep the detention center and the inmates ~~therein~~ *in the detention center*, unless the detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a detention center administrator or by another local government;
- (8) endorse upon all notices and process the year, month, day, hour, and minute of ~~reception~~ *receipt* and issue ~~therefor~~ to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of ~~reception~~ *receipt*;
- (9) serve all process or notices in the manner prescribed by law;
- (10) certify in writing upon the process or notices the manner and time of service or, if ~~he~~ *the sheriff* fails to make service, the reasons ~~of~~ *for* this failure, and return the papers without delay;
- (11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and
- (12) perform ~~such~~ other duties as *that* are required by law."

**Section 694.** Section 7-32-2124, MCA, is amended to read:

**"7-32-2124. Service of papers on sheriff.** Service of a paper, other than a process, upon the sheriff may be made by delivering it to ~~him~~ *the sheriff*, ~~or to one of his deputies or to a deputy~~, or a person in charge of the office during office hours; or, if ~~no such person~~ *if none of the enumerated individuals* is there, by leaving it in a conspicuous place in the office."

**Section 695.** Section 7-32-2125, MCA, is amended to read:

**"7-32-2125. Operation of sheriff's vehicle.** The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by ~~him~~ *the sheriff* and may also pay for the operation and maintenance of those vehicles from county funds."

**Section 696.** Section 7-32-2127, MCA, is amended to read:

**"7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator.** Any action for default or misconduct of ~~any a~~ sheriff, ~~his an~~ undersheriff, ~~his~~ detention center staff, or ~~any of his deputies a~~ deputy may be prosecuted against the executors or administrators of ~~such~~ *the sheriff*."

**Section 697.** Section 7-32-2129, MCA, is amended to read:

**“7-32-2129. Misconduct of undersheriff.** Any default, misfeasance, or malfeasance of such an undersheriff acting as sheriff pursuant to 7-32-2122, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him the undersheriff and is also a breach of the condition of the bond given by him the undersheriff to the sheriff.”

**Section 698.** Section 7-32-2130, MCA, is amended to read:

**“7-32-2130. Liability for refusing to pay over money.** If on demand the sheriff neglects or refuses to pay over any money to the person entitled thereto any money which to money that may come into his hands the sheriff's possession by virtue of his office, (after deducting his legal fees), the person may recover the amount thereof, with 25% damages and interest at the rate of 10% per a month from the time of demand, may be recovered by such person.”

**Section 699.** Section 7-32-2131, MCA, is amended to read:

**“7-32-2131. Liability in civil actions.** (1) If the sheriff does not return a notice or process in his the sheriff's possession with the necessary endorsement thereon without delay, he the sheriff is liable to the party aggrieved for \$200 and for all damages sustained by him the party.

(2) If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his the creditor's attorney, to levy upon or sell any property of the party charged in the writ which that is liable to be levied upon or sold, he the sheriff is liable to the creditor for the value of such the property.

(3) No A direction or authority by a party or his a party's attorney to a sheriff in respect to the execution of process or return thereof of process or any act or omission relating thereto to the process is not available to discharge or excuse the sheriff from a liability for neglect or misconduct unless it is contained in a writing signed by the attorney of the party or by the party.

(4) “Process”, as As used in this part, includes all writs, warrants, summons, and orders of courts of justice or judicial officers., the following definitions apply:

(a) “Notice” includes all papers and orders, (except process), required to be served in any proceeding before any a court, board, or officer or required by law to be served independently of such the proceeding.

(b) “Process” includes all writs, warrants, summons, and orders of courts of justice or judicial officers.”

**Section 700.** Section 7-32-2143, MCA, is amended to read:

**“7-32-2143. Mileage and expenses of sheriff in general.** (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall may receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to a detention center only his the sheriff's actual expenses when such the travel is made by railroad or airline; and when. When travel is by means other than by railroad or airline, he the sheriff shall must receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him the sheriff in conveying a person under arrest before a magistrate or to a detention center. He The sheriff shall must receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county., the same to be The mileage and expenses are in full payment for transporting and feeding such

the persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more inmates, only one charge for mileage may be charged made.

(2) ~~No mileage~~ Mileage may not be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall ~~must~~ be paid over to the county treasurer and deposited in the county general fund.

(3) (a) ~~No mileage~~ Mileage may not be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same document accompanies the summons and the service thereof of the document may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one charge for mileage may be allowed or charged; and in. In the service of subpoenas, only one mileage charge may be charged made when the persons named therein in the subpoena live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must may be computed only from such that place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one charge for mileage may be allowed.

(b) When ~~any~~ a sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his the office, he shall the sheriff or constable may receive mileage only for the more distant service, and no mileage in any case may not be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge \$1 for the service of each item of a civil nature that requires a return or proof of service.”

**Section 701.** Section 7-32-2202, MCA, is amended to read:

**“7-32-2202. Use of detention center in contiguous county.** (1) When there is no detention center in the county or when the detention center becomes unfit or unsafe for the confinement of inmates, the district court judge may, by written appointment filed with the district court clerk, designate the detention center of a contiguous county for the confinement of the inmates of his the judge’s county and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the detention center administrator of each county involved, who must receive into his the administrator’s detention center all inmates authorized to be confined therein in the detention center pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he the administrator were the detention center administrator of the county for whose use his the administrator’s detention center is designated. With respect to the persons so committed, he the administrator is deemed considered the detention center administrator of the county from which they were removed.

(3) When a detention center is erected in the county for the use of which the designation was made or its detention center is rendered fit and safe for the

confinement of inmates, the district *court* judge of that county ~~must~~ *shall*, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk ~~must~~ *shall* immediately serve a copy of the revocation upon the detention center administrator of each county involved. The detention center administrator in the designated county ~~must thereupon~~ *shall* remove the inmates to the detention center from which ~~the removal was had~~ *they were removed.*"

**Section 702.** Section 7-32-2207, MCA, is amended to read:

**"7-32-2207. Confinement of persons on civil process.** (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party ~~thereto to the action~~, the detention center administrator is not bound to receive ~~such the~~ person unless security is given on the part of the party at whose instance the process is issued, ~~by~~ *The security must be* a deposit of money, to meet the expenses for ~~him of the person's~~ necessary food, clothing, and bedding. ~~or The detention center administrator is not required to detain such the person any longer than the period for which these expenses are provided for.~~

(2) This section does not apply to cases ~~where in which~~ a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court."

**Section 703.** Section 7-32-2208, MCA, is amended to read:

**"7-32-2208. Actual confinement of inmates required.** An inmate committed to a detention center for trial or examination or, except as provided in 7-32-2225 through 7-32-2227, a prisoner convicted must be actually confined in the detention center until ~~he the inmate or prisoner~~ is legally discharged."

**Section 704.** Section 7-32-2211, MCA, is amended to read:

**"7-32-2211. Service of papers upon detention center administrator for prisoner inmate.** A detention center administrator ~~upon whom who is served with~~ a paper in a judicial proceeding, ~~that is~~ directed to an inmate in ~~his the administrator's~~ custody, ~~is served must forthwith~~ *shall immediately* deliver it to the inmate."

**Section 705.** Section 7-32-2234, MCA, is amended to read:

**"7-32-2234. Powers of detention center administrators.** A detention center administrator is responsible for the immediate management and control of the detention center subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of ~~such an~~ administrator and detention center personnel employed under ~~his the administrator's~~ authority include control over inmates:

- (1) within the confines and grounds of the detention center; and
- (2) outside the detention center confines and grounds while transporting any inmate or in the hot pursuit or apprehension of any escapee."

**Section 706.** Section 7-32-2246, MCA, is amended to read:

**"7-32-2246. Temporary release from detention center.** A detention center inmate may be granted, by court order and with the consent of the sheriff, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

- (1) seeking employment;
- (2) working at his employment;
- (3) conducting his *the inmate's* own business or self-employment;
- (4) attending to the needs of his *the inmate's* family;
- (5) attending an educational institution; or
- (6) obtaining medical treatment.”

**Section 707.** Section 7-32-2248, MCA, is amended to read:

**“7-32-2248. Inmate endangerment — penalty.** (1) A detention center administrator or staff member commits the offense of inmate endangerment if ~~he~~ *the administrator or staff member* knowingly:

- (a) places or keeps a juvenile with adult inmates;
- (b) uses corporal punishment against an inmate; or
- (c) uses physical force against an inmate, except as necessary for:
  - (i) self-defense;
  - (ii) control of inmates;
  - (iii) protection of another person from imminent physical attack; or
  - (iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed \$500.”

**Section 708.** Section 7-32-2249, MCA, is amended to read:

**“7-32-2249. False claims by detention center administrator.** ~~Every~~ A detention center administrator who falsely represents to the governing body of a local government the actual expenses of boarding detention center inmates, furnishing food and supplies, or providing services, ~~or~~ who presents to the governing body false items in a claim or false vouchers, ~~or~~ if ~~he~~ *the administrator* is not a private detention center administrator, *who* makes any profit from the keeping of inmates in his *the administrator's* custody and ~~every~~ a person who gives a false item or false voucher to be used by the detention center administrator in any claim against the local government is guilty of a misdemeanor.”

**Section 709.** Section 7-32-2250, MCA, is amended to read:

**“7-32-2250. Liability for escape in civil actions.** (1) A detention center administrator who fails to prevent the escape or rescue of a person *who was arrested in a civil action and who is in his the administrator's custody* ~~arrested in a civil action~~ without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the detention center administrator is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the detention center administrator is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the detention center administrator is liable for the actual damages sustained.



(2) Upon being sued for damages for an escape or rescue of a person in ~~his~~ *the detention center administrator's* custody, the ~~detention center~~ administrator may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a detention center administrator for a rescue or for an escape of a person arrested upon an execution or commitment if, after ~~his~~ *the* rescue or escape and before the commencement of the action, the inmate returns to the detention center or is retaken by the ~~detention center~~ administrator.”

**Section 710.** Section 7-32-4103, MCA, is amended to read:

**“7-32-4103. Supervision of police department.** ~~In~~ *The mayor in* all cities and towns, ~~the mayor,~~ or the manager in those cities operating under the commission-manager plan, ~~shall have~~ *has* charge of and supervision over the police department ~~thereof.~~ *He* *The mayor or manager* shall appoint all the members and officers ~~thereof of the department.~~ Subject to the provisions of this part, ~~he shall have the power to~~ *the mayor or manager may* suspend or remove any member or officer of the force. ~~He~~ *The mayor or manager* shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.”

**Section 711.** Section 7-32-4105, MCA, is amended to read:

**“7-32-4105. Duties of chief of police.** (1) ~~It is the duty of the~~ *The* chief of police:

(a) ~~to shall~~ execute and return all process issued by the city judge or directed to ~~him~~ *the chief of police* by any legal authority and ~~to attend upon~~ *must be present and shall assist* the city court regularly;

(b) ~~to shall~~ arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) ~~to must~~ have charge and control of all ~~policemen~~ *police officers*, subject to ~~such rules as that~~ *such rules as that* may be prescribed by ordinance, and ~~to report to the council all~~ *report to the council all* delinquencies or neglect of duty or official misconduct of ~~policemen~~ *police officers* for action of the council;

(d) ~~to shall~~ perform ~~such~~ other duties ~~as that~~ the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of ~~his~~ duties, but ~~he must~~ *the chief of police may* not serve a process in ~~any~~ a civil action or proceeding except when a city or town is a party.”

**Section 712.** Section 7-32-4106, MCA, is amended to read:

**“7-32-4106. List of active and eligible ~~policemen~~ *police officers*.** (1) The city council ~~shall have absolute and~~ *has* exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one *list is* an active list, ~~containing the names of individuals~~ *containing the names of individuals* who are to be actually employed and receive pay while ~~so~~ employed; and

(b) one *list is* an eligible list, ~~containing the names of individuals~~ *containing the names of individuals* who ~~shall~~ may not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty ~~shall must~~ become members of the eligible list without pay and ~~shall must~~ be

first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list ~~shall~~ *must* be entitled to fill a vacancy in the order of their appointment.

(3) ~~Such~~ *The* action of the council ~~shall under this section~~ *is not be* subject to review by any court.

(4) ~~In no event shall there be any officers~~ *Officers* or members ~~may not be~~ *may not* be placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list ~~shall equal in number~~ *is equal to 20% of the active list.*"

**Section 713.** Section 7-32-4107, MCA, is amended to read:

**"7-32-4107. Utilization of retired officers.** ~~Police~~ *Police* officers on the retired list of ~~any a city or town of this state~~ shall retire from the active list of police officers of ~~such the~~ city or town but ~~shall~~ *must* be subject to call for police service or active duty whenever an emergency ~~shall require~~ *requires* or the active list ~~be is~~ temporarily insufficient for proper policing of ~~such the~~ city or town, all under the rules ~~as that~~ the board of police commissioners or city council ~~shall~~ prescribe."

**Section 714.** Section 7-32-4108, MCA, is amended to read:

**"7-32-4108. Appointment to police force.** All appointments to the police force must be ~~appointed~~ *made* by the mayor; or, ~~the manager~~ in those cities operating under the commission-manager plan, *by the manager* and *must be* confirmed by the city council or commission. ~~No such~~ *An* appointment ~~must~~ *may* not be made until:

(1) an application for ~~such a~~ position on the police force has been filed with the mayor; or, ~~the manager~~ in those cities operating under the commission-manager plan, *with the manager* and referred ~~by him~~ to the police commission, ~~where such~~ *when a* commission exists; and

(2) ~~such the~~ applicant has successfully passed the examination required to be held by ~~such the~~ police commission and a certificate from ~~such the~~ police commission that the applicant has qualified for ~~such the~~ appointment has been filed with the mayor; or, ~~the manager~~ in those cities operating under the commission-manager plan *with the manager.*"

**Section 715.** Section 7-32-4109, MCA, is amended to read:

**"7-32-4109. Temporary employment for persons doing police work.** The mayor of ~~any a city~~ shall ~~have the power and authority~~ *may*, at any time when ~~he deems it~~ *considered* expedient, to employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department."

**Section 716.** Section 7-32-4110, MCA, is amended to read:

**"7-32-4110. Procedure for reinstatement on police force.** (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which ~~he the person~~ is applying for reinstatement may make application within 1 year from the date on which ~~his the person's~~ name was removed from the active list of police officers to the police commission of that city or town ~~wherein he~~ *in which the person* last served, and ~~his the~~ application must be considered by ~~said the~~ police commission within 30 days after receipt of ~~said the~~ application.

(2) ~~Said~~ *The* commission ~~shall may~~ not require the applicant to have a physical examination or other examination required of applicants for a position on the police force; ~~and in the event that~~ *If* the police commission recommends the reinstatement of ~~said the~~ applicant as a member of the police force, the probationary term required of applicants for positions ~~shall must~~ be dispensed with ~~as to such for the~~ applicant for reinstatement. ~~It shall be the duty of the~~ *The* mayor ~~to shall~~ submit to the city council of ~~said the~~ city at its next regular meeting the recommendation of the police commission; ~~and in the event that~~ *If* a majority of the city council vote in favor of adopting the recommendation of the commission, ~~said the~~ applicant ~~shall must~~ be immediately reinstated as a police officer in ~~said the~~ city or town.”

**Section 717.** Section 7-32-4111, MCA, is amended to read:

**“7-32-4111. Examination of applicants for position on police force.**

(1) All applicants for positions on the police force whose applications ~~shall have been are~~ referred to the police commission ~~shall must~~ be required to successfully undergo an examination before the police commission and to receive a certificate from ~~said the~~ commission that the applicant is qualified for ~~such~~ appointment for the probationary period ~~upon to~~ the police force.

(2) ~~Any An~~ applicant who ~~shall make makes~~ any false statement to the police commission as to ~~his the applicant’s~~ age or other required qualifications at ~~his an~~ examination before the police commission ~~shall be is~~ subject to suspension or dismissal from the police force after trial.”

**Section 718.** Section 7-32-4131, MCA, is amended to read:

**“7-32-4131. Compensation and allowance for sick or injured policemen police officers.** Whenever ~~any a~~ member of a police department in ~~any a~~ city or town ~~shall is~~, on account of sickness or disability suffered or sustained while a member of ~~such the~~ police department and not caused or brought on by dissipation or abuse, ~~be confined to any hospital or his the officer’s~~ home and ~~shall require requires~~ medical attention and care, the ~~police officer of such police department~~ may be allowed, by the city council, ~~his the police officer’s~~ salary ~~as such police officer~~ during ~~his the~~ absence and an amount equal to ~~his the~~ police officer’s expenses while confined for ~~such the~~ injury or sickness.”

**Section 719.** Section 7-32-4136, MCA, is amended to read:

**“7-32-4136. Assignment to light duty or another agency.** (1) Whenever, in the opinion of the municipality; ~~and~~ supported by a physician’s opinion, the officer is able to perform specified types of light police duty, payment of ~~his the officer’s~~ partial salary amount under 7-32-4132 ~~shall must~~ be discontinued if ~~he the officer~~ refuses to perform ~~such the~~ light police duty when it is available and offered ~~to him~~. ~~Such The~~ light duty ~~shall must~~ be consistent with the officer’s status as a law enforcement officer.

(2) With ~~his the officer’s~~ consent, the officer may be transferred to another department or agency within the municipality.”

**Section 720.** Section 7-32-4137, MCA, is amended to read:

**“7-32-4137. Effect on probationary status.** If the injured officer is on probationary status at the time ~~he becomes injured of injury~~, the balance of ~~his the~~ probationary time ~~shall must~~ be suspended until ~~he the officer~~ returns to regular duty or is discharged for cause.”

**Section 721.** Section 7-32-4155, MCA, is amended to read:

**“7-32-4155. Role of police commission in hearing and deciding appeals brought by policemen police officers.** (1) The police commission has jurisdiction and it is its duty to *shall* hear and decide appeals brought by any member or officer of the police department who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.

(2) ~~It is the duty of the~~ *The* police commission *shall*, at the time set for hearing an appeal of a police officer, ~~to~~ hear and determine the appeal according to the rules of evidence applicable to courts of record in the state.”

**Section 722.** Section 7-32-4159, MCA, is amended to read:

**“7-32-4159. Subpoena authority of police commission.** ~~The chairman presiding officer or acting chairman presiding officer of the police commission shall have power to~~ *may* issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person ~~duly~~ served with a subpoena is bound to attend in obedience ~~thereto~~ *to the subpoena*. The police commission ~~shall have~~ *has* the same authority to enforce obedience to the subpoena and to punish the disobedience ~~thereof~~ *to the subpoena* as is possessed by a judge of the district court in ~~like~~ *similar* cases; ~~provided, however~~ *However*, that punishment for disobedience is subject to review by the district court of the proper county.”

**Section 723.** Section 7-33-2127, MCA, is amended to read:

**“7-33-2127. Withdrawal by owner of individual tract adjacent to municipality.** In lieu of the detraction procedure set forth in 7-33-2122 and 7-33-2123, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the ~~chairman presiding officer~~ of the trustees of the fire district or, if ~~none~~ *there are no trustees*, to the board of county commissioners of ~~his~~ *the owner's* intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to ~~his~~ *the* petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district.”

**Section 724.** Section 7-33-2312, MCA, is amended to read:

**“7-33-2312. Organization of fire company.** (1) ~~Every~~ *A* fire company organized pursuant to 7-33-2311 ~~must shall~~ choose or elect a ~~foreman, who is the~~ presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding \$5 or expulsion, for each offense.

(2) ~~Every~~ *A* regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and ~~shall~~ *must* be affixed ~~by him~~ to exempt certificates, certificates of active membership, and ~~such~~ other documents ~~as~~ *that* the bylaws may provide. The secretary of ~~every~~ *a* department having a seal ~~must shall~~ take the constitutional oath of office and give ~~such~~ *a* bond ~~as~~ *that* the bylaws provide for the faithful performance of ~~his~~ *the secretary's* duties.”

**Section 725.** Section 7-33-2315, MCA, is amended to read:

**“7-33-2315. Certificate of membership in fire company.** (1) Every A firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department or company to which ~~he~~ *the firefighter* belonged a certificate to that effect.

(2) (a) ~~Every~~ *An* active firefighter must have a certificate of that fact, signed by the chief of the fire department or the ~~foreman~~ *presiding officer* of the company to which ~~he~~ *the firefighter* belongs. ~~Such~~ *The* certificates must be countersigned by the secretary and over the seal of the company, if one is provided.

(b) ~~It~~ *If* authorized by the bylaws of the company, in lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, “~~exempt certificates~~” *exempt certificates* may be issued by the clerk and recorder of the county, over ~~his~~ *the clerk’s* official seal and signature, which entitles the holder to ~~like~~ *an* exemption from military duty.

(3) Each certificate entitles the holder to *an* exemption from military duty. ~~Every such~~ *Each* certificate is prima facie evidence of the facts ~~therein~~ stated in *the certificate*.

(4) The secretary of the fire department or fire company ~~must~~ *shall* keep a record of ~~all certificates~~ *each certificate* of exemption or active membership, the date ~~thereof~~ *of the certificate* and to whom issued, and, when ~~no~~ *a* seal is *not* provided, similar entries of certificates issued to obtain ~~county clerk’s~~ *county clerk’s* certificates *from the county clerk and recorder.*”

**Section 726.** Section 7-33-4104, MCA, is amended to read:

**“7-33-4104. Duties of chief and assistant chief of fire department.** (1) The chief of the fire department ~~shall have~~ *has* sole command and control over all persons connected with the fire department of the city or town and ~~shall possess~~ *has* full power and authority over its organization, government, and discipline. ~~and to that end~~ *The chief* may ~~from time to time~~ establish ~~such~~ disciplinary rules ~~as he may deem that the chief considers~~ *advisable*, subject to the approval of the city or town council. ~~He shall have~~ *The chief has* charge of and ~~be is~~ responsible for the engines and other apparatus and the property of the town or city furnished *to* the fire department and *shall* see that they are at all times ready for use in the extinguishing of fires.

(2) The assistant chief of the fire department shall aid the chief in the work of the department and in ~~his~~ *the chief’s* absence shall perform ~~his~~ *the chief’s* duties.”

**Section 727.** Section 7-33-4124, MCA, is amended to read:

**“7-33-4124. Suspension procedure.** (1) In all cases of suspension, the person suspended must be furnished with a copy of the charge against ~~him~~ *the person*, in writing, setting forth reasons for the suspension. ~~Such~~ *The* charges must be presented to the next meeting of the council or commission, and a hearing ~~had thereon, when~~ *must be held at which* the suspended member of the fire department may appear in person or by counsel and make ~~his~~ *a* defense to ~~said~~ *the* charges.

(2) ~~Should~~ *If* the charges *are* not be presented ~~to~~ *at* the next meeting of the council or commission after the suspension or ~~should if~~ the charges ~~be found~~ *are* not proven by the council or commission, the suspended person ~~shall~~ *must* be

reinstated and ~~be is~~ entitled to ~~his the person's~~ usual compensation for the time ~~so~~ suspended.

(3) If ~~such the~~ charges are ~~found~~ proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose ~~such a~~ penalty as it ~~shall determine~~ *determines that* the offense warrants, either in the continuation of the suspension for a limited time or in the removal of the suspended person from the fire department.”

**Section 728.** Section 7-33-4125, MCA, is amended to read:

**“7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority.** (1) ~~Should~~ If the council at any time ~~reduce~~ *reduces* the number of firefighters in the fire department, those most recently appointed ~~shall must~~ be selected for retirement from the fire department. The city or town clerk shall keep a list of ~~such the~~ retired firefighters.

(2) ~~Should~~ If the number of firefighters ~~be is~~ again increased by the council, the ~~men individuals on said the~~ list ~~shall must~~ be called into service, *with* the longest ~~service serving~~ firefighters being first selected for service in the fire department.”

**Section 729.** Section 7-33-4133, MCA, is amended to read:

**“7-33-4133. Payment of partial salary to firefighter injured in performance of duty.** (1) A member of a fire department of a ~~first-~~ *first-class* or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between ~~his the member's~~ net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing ~~his the firefighter's~~ duties as a result of the injury.”

**Section 730.** Section 7-34-2104, MCA, is amended to read:

**“7-34-2104. Details relating to petition.** (1) The petition may consist of one sheet or several sheets, identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk *and recorder*. The petition ~~shall must~~ give the post-office address and voting precinct of each petitioner.

(2) Only persons who are qualified to sign ~~such the~~ petitions ~~shall be~~ *are* qualified to circulate the ~~same~~ *petitions*, and there ~~shall must~~ be attached to the complete petition the affidavit of ~~some a~~ person who circulated or assisted in circulating the petition that ~~he the person~~ believes the signatures ~~thereon~~ *on the petition* are genuine and the signers knew the contents ~~thereof~~ *of the petition* before signing ~~the same it~~.”

**Section 731.** Section 7-34-2105, MCA, is amended to read:

**“7-34-2105. Petition to be filed with county clerk *and recorder* — clerk's certificate.** The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, ~~shall must~~ be filed with the county clerk and recorder, who shall, within 15 days ~~thereafter~~, carefully examine the ~~same~~ *petition* and the county records showing the qualifications of the petitioners and attach it to a certificate under ~~his the~~

clerk and recorder's official signature and the seal of his office, which ~~The~~ certificate ~~shall~~ *must* set forth:

(1) the total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last-completed assessment roll for state and county taxes;

(2) which and how many of the persons whose names are subscribed to ~~such~~ *the* petition are possessed of all of the qualifications required of signers to ~~such~~ *the* petition; and

(3) whether ~~such~~ *the* qualified signers constitute more or less than 30% of the registered electors of the proposed hospital district who are taxpayers upon property ~~thereon~~ *in the proposed district* and whose names appear on the last-completed assessment roll for state and county taxes."

**Section 732.** Section 7-34-2106, MCA, is amended to read:

**"7-34-2106. Presentation of petition to board of county commissioners — hearing required.** (1) The county clerk and recorder shall present the petition and ~~his~~ *the clerk's* certificate to the board of county commissioners at its first meeting held after ~~he~~ *the clerk* has attached ~~his~~ *the* certificate.

(2) The board shall ~~thereupon~~ carefully examine the petition, and if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of ~~such~~ *the* hospital district."

**Section 733.** Section 7-34-2118, MCA, is amended to read:

**"7-34-2118. Term of office.** (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first district meeting following their election and until their respective successors ~~shall be~~ *are* elected and qualified.

(2) Annually ~~thereafter~~ *after the initial election* there may be elected a trustee to serve for a term of 3 years and until ~~his~~ *a* successor ~~shall be~~ *is* qualified. ~~Such~~ *The* term of 3 years ~~shall commence~~ *commences* at the first district meeting following the ~~said~~ trustee's election."

**Section 734.** Section 7-35-2103, MCA, is amended to read:

**"7-35-2103. Hearing on creation of district.** At the time fixed for ~~said~~ *the* hearing, the board shall determine whether or not it complies with the requirements ~~hereinbefore~~ set forth *in this part* and whether or not the notice required ~~herein~~ *in this part* has been published as required and must hear all competent and relevant testimony offered in support of or in opposition ~~thereto~~ *to the petition*. ~~Said~~ *The* hearing may be adjourned from time to time for the determination of ~~said~~ facts, *for a period* not to exceed 2 weeks ~~in all~~."

**Section 735.** Section 7-35-2133, MCA, is amended to read:

**"7-35-2133. Appointment of trustees of fund.** (1) The district judge shall, upon receipt of the application, appoint a trustee or a board of trustees to administer the fund from a list submitted to ~~him~~ *the judge* by the trustees of the public cemetery district.

(2) The number of trustees for the fund may not exceed five, with the exact number to be set at the discretion of the trustees of the public cemetery district. Each trustee for the fund must be a resident of the state during the time ~~he~~ *the trustee* exercises the powers of ~~such~~ *the* trust.

(3) ~~Whenever~~ *If* a person, ~~so~~ *who is* chosen and appointed, fails to qualify within 30 days after ~~his~~ appointment, a vacancy exists, and the judge of the district court shall appoint from a list submitted to ~~him~~ *the judge* by the trustees of the public cemetery district ~~some~~ *a* person possessing the ~~above~~ qualifications to fill the vacancy in the board of trustees of the fund. ~~Trustees of the fund appointed by the public cemetery district or district court prior to July 1, 1955, continue to hold office as trustees until terminated as provided in 7-35-2131 through 7-35-2150.~~

**Section 736.** Section 7-35-2139, MCA, is amended to read:

**“7-35-2139. Bond requirements for trustees of fund.** (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to ~~such~~ *the* trust or to ~~such~~ trusteeship, each person chosen to be a trustee of ~~such~~ *the* fund shall give to the public cemetery district for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving ~~such~~ *the* bond, with good and sufficient sureties ~~thereto~~ who shall justify in the aggregate in at least double the amount of ~~such~~ *the* bond, ~~the same to~~ *The bond must* be conditioned for the due and faithful performance of ~~his~~ *the* trust until July 1 of the next even-numbered year after the year in which ~~such~~ *the* bond ~~shall be~~ *is* given and until ~~such~~ *the* trustee ~~shall give~~ *gives* a new bond as hereinafter provided *in this section*.

(2) On July 1 in each even-numbered year, each trustee shall give a new bond conditioned ~~in the same way, the~~ *in an* amount thereof ~~to be determined by the same rule,~~ and with sureties as ~~above~~ provided *in subsection (1)*.

(3) ~~Such~~ *The* bonds ~~shall all~~ *must* be approved by a judge of the district court for the judicial district in which the cemetery for ~~such~~ *the* trust exists or some part thereof ~~shall be~~ *of the trust is* situated and ~~shall~~ *must* be filed with the clerk of the district court of the county in which ~~such~~ *the* cemetery is located.”

**Section 737.** Section 7-35-2141, MCA, is amended to read:

**“7-35-2141. Reduction of bond by deposit of money and securities.**

(1) For the purpose of fixing the amount of the bond, the value of the property on hand may be reduced in an amount equal to the value of the money, bonds, and securities ~~which~~ *that* the trustee or trustees of the permanent care and improvement fund ~~may elect to and do~~ deposit with the county treasurer as hereinafter provided *in subsection (2)*.

(2) The trustee or trustees of ~~such~~ *the* fund may deposit for safekeeping ~~such~~ *the* money, bonds, and securities as ~~he or~~ they see fit with the county treasurer of the county in which ~~said~~ *the* cemetery or some part thereof ~~of the cemetery is situated. It is the duty of the~~ *The* county treasurer ~~to~~ *shall* receive and safely keep all ~~such~~ money, bonds, and securities ~~or any part thereof~~ and pay them out or deliver them ~~up~~ upon the order of ~~such~~ *the* trustee or a majority of the trustees, when countersigned by a judge of ~~said~~ *the* judicial district and not otherwise, and ~~to~~ *shall* keep an account with ~~such~~ *the* trustee or trustees of all ~~such~~ *those* transactions. For the safekeeping and payment and delivery of all ~~such~~ money, bonds, and securities as ~~herein~~ provided *in this section*, the



treasurer and his *the treasurer's* sureties are liable upon his *the treasurer's* official bond.”

**Section 738.** Section 7-35-2144, MCA, is amended to read:

**“7-35-2144. Vesting of funds in trustees.** Upon the election, appointment, and qualification, as provided in this part, of the trustees of ~~such~~ *the fund*, all of the title to the funds included in ~~said the~~ *the trust* and all of the rights, powers, authorities, franchises, and trusts of ~~whatsoever thereunto appertaining shall at once pertaining to the trust~~ vest in ~~him or them~~ *the trustees*. In case of the failure of any of those ~~so~~ chosen and appointed to qualify within 30 days after their appointment, then the ~~same shall~~ *rights, powers, authorities, franchises, and trusts* vest in ~~the one or more~~ *those* who shall qualify.”

Approved March 27, 2007

## CHAPTER NO. 62

[SB 43]

AN ACT MODIFYING LICENSING PROVISIONS FOR PETROLEUM MEASURING DEVICES WHEN OWNERSHIP OF THE DEVICES CHANGES; AND AMENDING SECTION 82-15-105, MCA.

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

**Section 1.** Section 82-15-105, MCA, is amended to read:

**“82-15-105. Licenses and fees — status of license on transfer of ownership.** (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must be obtained by the dealer by making application to the department upon ~~blank~~ forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall ~~upon conviction~~ be punished *upon conviction* as provided by this part.

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. The fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on the anniversary date established by rule by the board of review established in 30-16-302. There is an additional charge of 50% on all license fees that are not paid within 60 days of the licensee's anniversary date. If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees have been paid.

(4) ~~If ownership of a measuring device changes and the device:~~

(a) ~~remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;~~

(b) ~~is moved to a new location, the license is void, and the new owner shall:~~

(i) ~~apply for a new license that will expire on the anniversary date of that year, as provided in subsection (3); and~~

(ii) pay the applicable fees.”

Approved March 27, 2007

## CHAPTER NO. 63

[SB 44]

AN ACT IMPLEMENTING A 2006 RECOMMENDATION OF THE PRIVATE LAND/PUBLIC WILDLIFE ADVISORY COUNCIL BY ADDING WILD BUFFALO OR BISON, ANTELOPE, AND MOUNTAIN LION TO THE LIST OF BIG GAME LICENSES THAT THE FISH, WILDLIFE, AND PARKS COMMISSION MAY ISSUE THROUGH AN ANNUAL LOTTERY; AMENDING SECTION 87-1-271, MCA; AND PROVIDING AN IMMEDIATE 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; ~~and~~
- (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 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. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 2007

## CHAPTER NO. 64

[SB 53]

AN ACT PROVIDING A PROCEDURE FOR CREATING A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; REQUIRING A LETTER OF INTENT TO ACCOMPANY A BILL DRAFT REQUEST FOR A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; PROVIDING CONDITIONS FOR A LETTER OF INTENT WHEN ADDING PROFESSIONS OR OCCUPATIONS TO EXISTING LICENSING BOARDS; ADDRESSING PROSPECTIVE FEES IN THE LETTER OF INTENT; AND PROVIDING A PROCEDURE FOR REVIEWING EXISTING BOARDS, CONSOLIDATING BOARDS, AND RESOLVING FINANCIAL CONSIDERATIONS FOR REPEALED BOARDS.

WHEREAS, licensing boards or programs provide for self-regulation by professions or occupations and are authorized by the state through its role of protecting public health, safety, or welfare or providing for the common good; and

WHEREAS, documentation regarding the rationale for licensing a profession or occupation is helpful for legislators to use in determining whether the potential increase in cost to the public and limitation on competition are outweighed by the prospective protection of public health, safety, or welfare or provision for the common good; and

WHEREAS, advance information on costs better serves both potential licensees and legislators in determining the cost of a board or a program.

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

**Section 1. Purpose.** It is the intent of the legislature to:

- (1) exercise the police power of the state through the establishment of licensing boards only when regulation of a profession or occupation benefits the public health, safety, welfare, or common good of the state's residents and that benefit outweighs the potential increased cost to the public and limitation on competition;
- (2) recognize those professions or occupations that require specialized skill or training; and
- (3) provide the public with a means to determine whether practitioners have met competency standards and to complain if the competency is suspect.

**Section 2. Intent to create new board.** (1) A bill draft request to create a licensing board must include a letter of intent not exceeding 1,000 words that addresses the criteria in subsections (2) and (3).

(2) The letter of intent must contain the following descriptions:

- (a) how licensing would protect and benefit the public and, in particular, how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, or welfare or the common good;
- (b) the extent of practitioners' autonomy, as indicated by the degree of independent judgment that a practitioner may exercise or the extent of skill or experience required in making the independent judgment;
- (c) the distinguishable scope of practice;
- (d) the overlap or shared practices with an existing, licensed profession or occupation;

(e) the degree, if any, to which licensing would restrict entry into the profession or occupation for reasons other than public health, safety, or welfare or the common good;

(f) the specialized skills or training required for the profession or occupation;

(g) the proposed qualifications for licensure;

(h) whether a licensure exception would be provided to existing practitioners and whether those eligible for the exception would be required to meet proposed qualifications at a certain time;

(i) a list of other states that license the profession or occupation;

(j) regulatory alternatives other than licensing that are available to the practitioners of the profession or occupation; and

(k) previous efforts, if any, to regulate the profession or occupation.

(3) In order to help in the determination of licensing costs, the letter of intent must contain a good faith effort to provide answers to the following questions:

(a) how many licensees are anticipated, including the number of practitioners in Montana;

(b) what is the proposed makeup of the licensing board; and

(c) what are the projected annual licensing fees based on information from the department of labor and industry for all costs associated with a board of the projected size.

(4) After receiving a copy of the responses to subsections (2), (3)(a), and (3)(b), the department of labor and industry shall assist those developing the letter of intent under [section 3] or this section with the responses to subsection (3)(c) of this section.

(5) For the purposes of this section, a letter of intent is a public record.

**Section 3. Intent to combine profession or occupation with existing board.** (1) A bill draft request that proposes to license a profession or occupation by combining that profession or occupation with an existing board must contain a letter of intent if one of the following conditions applies:

(a) the profession or occupation to be licensed falls under the supervisory authority of a profession or occupation with an existing board; or

(b) the profession or occupation to be licensed has an overlapping scope of practice or dual licensure with a profession or occupation under an existing board.

(2) A letter of intent to combine with an existing board must contain responses to the questions provided in [section 2].

(3) A letter of intent under this section is a public record.

**Section 4. Interim committee review of licensing boards and programs — criteria — repeal — consolidation.** (1) (a) Before January 1 of each even-numbered year, a legislative interim committee responsible for monitoring licensing boards and programs shall notify the department to which licensing boards or programs are administratively attached if the committee plans to review one or more licensing boards or programs to determine the need for a board or a program and the financial solvency or appropriate administrative attachment of the board or program.

(b) A review under subsection (1)(a) is separate from a performance audit conducted by the legislative audit committee.

(2) The focus of a review under subsection (1)(a) is:

(a) to determine whether a board or program continues to be needed to protect public health, safety, or welfare or the common good by addressing the following questions:

(i) does the improper practice of the profession or occupation pose a physical, financial, or emotional threat to public health, safety, or welfare and is there evidence of harm from improper practice; and

(ii) does the practice of the profession or occupation require specific training or skills that make evaluation of competency difficult for the consumer; or

(b) to assess the financial solvency of the board or program and the impact on consumers and on licensees if higher fees are projected for the next biennium.

(3) After the review, the legislative interim committee may draft legislation to:

(a) repeal the board or program if the board or program is no longer needed for public health, safety, or welfare or the common good; or

(b) combine a board with other licensing boards if a board meets the criteria in subsection (2)(a) but has one of the following criteria:

(i) is expected to have higher fees than if the board operates in combination with another board with similar interests;

(ii) has fewer than 200 licensees; or

(iii) has no or a limited number of complaints each year.

(4) The legislative interim committee, after a review of the administrative attachment of a board or program, may propose legislation to administratively attach the board or program to a department that has responsibilities related to the board or program.

**Section 5. Repeal of licensing board or program law — deposit of fees.** (1) If the legislature repeals a licensing board or program law, the department of labor and industry may collect only delinquent licensing fees or fines, if provided by law, on behalf of the repealed licensing board or program. Continuing education and other requirements for maintaining a license cease with the effective date of the repeal.

(2) (a) Fees collected on behalf of a board or program that is proposed to be repealed must be deposited in the state special revenue fund for the use of the board or program.

(b) Fees that are not needed for satisfying debt obligations of the board or program may be used by the department to offset the costs to the department of all boards and programs.

**Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [sections 1 through 5].

**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].

Approved March 27, 2007

## CHAPTER NO. 65

[SB 59]

AN ACT APPLYING THE REGULATIONS OF THE FEDERAL HUMANE METHODS OF SLAUGHTER ACT OF 1978 TO THE PROVISIONS OF THE MONTANA MEAT AND POULTRY INSPECTION ACT; AMENDING SECTION 81-9-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 81-9-219, MCA, is amended to read:

**“81-9-219. Application.** The provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons, establishments, animals, and articles regulated under the Federal Meat Inspection Act, 21 U.S.C. 601 through 695, or the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on October 1, 1987, or the federal *Humane Methods of Slaughter Act of 1978*, 7 U.S.C. 1901, 1902, 1904, 1906, and 1907, as that act read on [the effective date of this act], only to the extent provided for therein in the federal acts.”

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

Approved March 27, 2007

## CHAPTER NO. 66

[SB 62]

AN ACT REVISING THE DAILY PAY RATE FOR ADVISORY COUNCIL MEMBERS; AMENDING SECTION 2-15-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-15-122, MCA, is amended to read:

**“2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state’s institutions and the presidents of the units of the state’s university system, may also create advisory councils but only if federal law or regulation requires that such the official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. ~~They must~~ *The creating authority shall* file a record of each council created by ~~them~~ *it* in the office of the governor and the office of the secretary of state in accordance with subsection (9) ~~of this section~~.

(2) Each advisory council created under this section ~~shall~~ *must* be known as the “... advisory council”.

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the ~~governor~~ *creating authority*; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) (a) ~~Unless he an advisory council member~~ is a full-time salaried officer or employee of this state or of any political subdivision of this state, ~~each the member~~ is entitled to be paid in an amount to be determined by the department head, not to exceed ~~\$25~~ \$50 for each day in which ~~he the member~~ is actually and necessarily engaged in the performance of council duties; and ~~he is also entitled~~ to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. *The maximum daily pay rate must be adjusted for inflation annually using the formula provided in 15-6-134(2)(b)(ii) and (2)(b)(iii), except that the base income level and appropriate dollar amount must be \$50 a day.*

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, each advisory council shall elect a ~~chairman~~ *presiding officer* and ~~such other officers as~~ *that* it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the ~~chairman~~ *presiding officer* or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) ~~of this section~~, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor ~~must~~ *shall* file in ~~his~~ *the governor's* office and in the office of the secretary of state a record of the council created showing ~~the council's~~:

(a) *the council's* name, in accordance with subsection (2) ~~of this section~~;

(b) *the council's* composition;

(c) *the* names and addresses of the appointed members;

(d) *the council's* purpose; and

(e) *the council's* term of existence, in accordance with subsection (10) ~~of this section~~.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the ~~governor or by the board of public education, the board of regents of higher~~

education, the state board of education, the attorney general, the state auditor, the secretary of state, or the superintendent of public instruction for those advisory councils created *appointing authority* in the manner set forth in subsection (1)(e) of this section. If the existence of an advisory council is extended, ~~they~~ *the appointing authority* shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved March 27, 2007

## CHAPTER NO. 67

[SB 70]

AN ACT REVISING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION; AND AMENDING SECTION 10-3-1204, MCA.

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

**Section 1.** Section 10-3-1204, MCA, is amended to read:

**“10-3-1204. State emergency response commission.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of ~~27~~ 29 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and ~~injury prevention section~~ *trauma systems section* of the ~~health policy and services~~ *public health and safety* division in the department of public health and human services, the department of fish, wildlife, and parks, ~~the department of agriculture~~, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, *Montana’s petroleum industry, Montana’s insurance industry*, the university system, ~~a local emergency planning committee~~, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. *At least one representative must be a member of a local emergency planning committee.* Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.



(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Approved March 27, 2007

## CHAPTER NO. 68

[SB 72]

AN ACT REQUIRING THAT MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD APPOINTED BY THE GOVERNOR BE CONFIRMED BY THE SENATE; AMENDING SECTION 2-15-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Public Employees' Retirement Board (PERB) administers and manages the assets of 10 separate retirement plans, with combined trust fund assets of over \$4.2 billion and benefit payments of over \$180 million to more than 18,000 retirees annually; and

WHEREAS, the PERB has a fiduciary obligation to its paying members, retirees, and taxpayers to adopt and implement investment, administrative, and other policies that safeguard the interests of the members, retirees, and taxpayers; and

WHEREAS, the Legislature has the obligation and authority to oversee and supervise those investment, administrative, and other policies; and

WHEREAS, Montana statutes now require that the Governor submit to the Montana Senate for confirmation by the Senate the appointments to at least 65 various boards, committees, councils, and commissions; and

WHEREAS, among the 65 entities for which Senate confirmation is now required are Title 37 licensing boards, such as the Board of Plumbers, and regulatory boards, such as the Board of Milk Control; and

WHEREAS, the process of investigation and confirmation used by the Senate helps ensure that appointees to the 65 boards, committees, councils, and commissions are sincerely interested in the appointment, that they are responsive to the constituencies that they serve, and that they are legally and otherwise qualified for the appointment that they seek; and

WHEREAS, the State Administration and Veterans' Affairs Interim Committee believes that the functions, responsibilities, and authority of the members of the PERB are at least equal to some of the other boards, committees, councils, and commissions for which Senate confirmation is now required; and

THEREFORE, the State Administration and Veterans' Affairs Interim Committee recommends that the gubernatorial appointments to the PERB be made subject to confirmation by the Montana Senate.

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

**Section 1.** Section 2-15-1009, MCA, is amended to read:

**"2-15-1009. Public employees' retirement board — terms — allocation.** (1) There is a public employees' retirement board.

(2) The board consists of seven members appointed by the governor *with the consent of the senate*. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to Title 19, chapter 3, part 21);

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

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

**Section 3. Applicability.** [This act] applies to members of the public employees' retirement board appointed after [the effective date of this act].

Approved March 27, 2007

## CHAPTER NO. 69

[SB 73]

AN ACT REQUIRING A FILING OFFICER TO GIVE NOTICE TO THE DEBTOR PRIOR TO REJECTING THE FILING OF OR REMOVING THE FILING OF A LIEN THAT THE FILING OFFICER HAS REASON TO BELIEVE IS IMPROPER OR FRAUDULENT; AND AMENDING SECTION 30-9A-420, MCA.

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

**Section 1.** Section 30-9A-420, MCA, is amended to read:

**"30-9A-420. Removal of improper or fraudulent liens — notice to secured party and debtor.** (1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party *and the debtor*.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien."

Approved March 27, 2007

## CHAPTER NO. 70

[SB 76]

AN ACT AMENDING THE LAWS GOVERNING ACCESS TO TAX INFORMATION; PROVIDING FOR ACCESS TO CERTAIN TAX INFORMATION BY THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING CONFIDENTIALITY OF FEDERAL RETURN INFORMATION; REQUIRING THAT CONFIDENTIAL INFORMATION DISCLOSED TO THE

LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING BE SUBJECT TO RESTRICTIONS ON DISCLOSURE; CLARIFYING THE AUTHORIZED DISCLOSURE OF CERTAIN CORPORATION TAX INFORMATION; CLARIFYING PENALTIES FOR UNAUTHORIZED DISCLOSURE; AMENDING SECTIONS 5-12-303, 15-30-303, 15-31-511, 17-1-132, AND 17-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Federal return information.** (1) Except as provided by section 6103 of the Internal Revenue Code, 26 U.S.C. 6103, and subsection (2) of this section, it is unlawful to knowingly or purposely divulge or make known in any manner any federal tax return or federal tax return information submitted on state tax returns pursuant to state law.

(2) The department shall furnish state return information to the legislative auditor, the legislative fiscal analyst pursuant to 5-12-303, and the office of budget and program planning pursuant to 17-7-111, unless the furnishing of the information requested is specifically prohibited by federal or state law. The legislative fiscal analyst and the office of budget and program planning may disclose state return information to each other. State return information includes information on or a copy of any portion of a federal return or any information from a federal return that is required to be attached or included in a state return under state law.

(3) Income tax information held by the department, the legislative auditor, the legislative fiscal analyst, and the office of budget and program planning are solely for their official use and are not a public record.

(4) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public officer or employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

**Section 2.** Section 5-12-303, MCA, is amended to read:

**“5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

~~(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.~~

(3) (a) *The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.*

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

(4)(4) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5)(5) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the fiscal analyst that specified records or information may contain confidential information.”

**Section 3.** Section 15-30-303, MCA, is amended to read:

**“15-30-303. Confidentiality of tax records.** (1) Except as provided in 5-12-303, [section 1], 17-7-111, and subsections (7) and (8) of this section, or in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office *or employment* and may not hold any public office *or public employment* in this state for a period of 1 year after dismissal *or, in the case of a former officer or employee, for 1 year after conviction.*

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) ~~The~~ *On written request to the director or a designee of the director, the department shall furnish:*

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs

information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, *[section 1]*, and 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

**Section 4.** Section 15-31-511, MCA, is amended to read:

**"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) ~~The~~ *On written request to the director or a designee of the director, the department shall on request:*

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) ~~deliver~~ *provide* corporation income tax data information, including any information that may be required under Title 15, chapter 30, part 11, to the legislative fiscal analyst, as provided in 5-12-303 or [section 1], and the office of budget and program planning, as provided in [section 1] or 17-7-111; ~~but the~~ *The* information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed \$1,000 ~~or be imprisoned in the county jail for a term not to exceed 1 year, or both \$500.~~ If a public servant, as defined in 45-2-101, ~~officer or public employee~~ is convicted of violating this section, the person ~~forfeits~~ *is dismissed from office or employment* and may not hold any public office or public employment in the state for a period of 1 year after ~~dismissal or, in the case of a former officer or employee, for 1 year after conviction.~~

**Section 5.** Section 17-1-132, MCA, is amended to read:

**"17-1-132. Access to information.** (1) The budget director ~~shall have~~ *has* the power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

(2) *The budget director may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.*

(3) *When confidential records and information are obtained from a state agency, the budget director and staff are subject to the same penalties for unauthorized disclosure of the confidential records and information as are provided for under the laws administered by the state agency. The budget*



director shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

*(4) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the budget director that specified records or information may contain confidential information.”*

**Section 6.** Section 17-7-111, MCA, is amended to read:

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

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

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

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

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

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.~~

*(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.*

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

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [section 1].

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

Approved March 27, 2007

## CHAPTER NO. 71

[SB 81]

AN ACT DEFINING "PROFESSIONAL PERSON" TO INCLUDE LICENSED PSYCHOLOGISTS; AND AMENDING SECTION 53-21-102, MCA.

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

**Section 1.** Section 53-21-102, MCA, is amended to read:

**“53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) “Abuse” means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) “Behavioral health inpatient facility” means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(3) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(4) “Commitment” means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) “Court” means any district court of the state of Montana.

(6) “Department” means the department of public health and human services provided for in 2-15-2201.

(7) “Emergency situation” means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) “Friend of respondent” means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person’s conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) “Mental disorder” means any organic, mental, or emotional impairment that has substantial adverse effects on an individual’s cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) “Mental health facility” or “facility” means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) “Mental health professional” means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) “Neglect” means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) “Next of kin” includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) “Patient” means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) “Peace officer” means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) “Professional person” means:

- (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a licensed psychologist; or

(d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) “Reasonable medical certainty” means reasonable certainty as judged by the standards of a professional person.

(18) “Respondent” means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Approved March 27, 2007

## CHAPTER NO. 72

[SB 82]

AN ACT PROVIDING THAT THE RULES FOR USE OF INFORMATION TECHNOLOGY RESOURCES FOR THE LEGISLATIVE BRANCH BE INCLUDED IN THE LEGISLATIVE BRANCH COMPUTER SYSTEM PLAN; AND AMENDING SECTION 2-17-518, MCA.

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

**Section 1.** Section 2-17-518, MCA, is amended to read:

**"2-17-518. Rulemaking authority.** (1) The department shall adopt rules to implement this part, including the following:

(a) rules to guide the review and approval process for state agency software and management systems that provide similar functions for multiple state agencies, which must include but are not limited to:

(i) identifying the software and management systems that must be approved;

(ii) establishing the information that state agencies are required to provide to the department; and

(iii) establishing guidelines for the department's approval decision;

(b) rules to guide the review and approval process for state agency acquisition of information technology resources, which must include but are not limited to processes and requirements for:

(i) agency submissions to gain approval for acquiring information technology resources;

(ii) approving specifications for information technology resources; and

(iii) approving contracts for information technology resources; and

(c) rules for granting exceptions from the requirements of this part, which must include but are not limited to:

(i) a process for applying for an exception; and

(ii) guidelines for determining the department's approval decision.

(2) The department may adopt rules to guide the development of state agency information technology plans. The rules may include:

(a) agency plan review procedures;

(b) agency plan content requirements;

(c) guidelines for the department's approval decision; and

(d) dispute resolution processes and procedures.

(3) Adequate rules for the use of any information technology resources must be adopted by the:

(a) supreme court for judicial branch agencies; and

(b) legislative council, ~~with the concurrence of the legislative audit committee and the legislative finance committee, as a part of the legislative branch computer system plan, as provided for in 5-11-405, for the consolidated legislative branch, as provided for in 5-2-504.~~"

Approved March 27, 2007

## CHAPTER NO. 73

[SB 83]

AN ACT CLARIFYING THE ROLE OF THE CHILD AND FAMILY SERVICES DIVISION WHEN A NONCUSTODIAL PARENT MAY BE CONSIDERED FOR CUSTODY OF A YOUTH IN NEED OF CARE; AND AMENDING SECTIONS 41-3-438, 41-3-442, AND 41-3-445, MCA.

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

**Section 1.** Section 41-3-438, MCA, is amended to read:

**"41-3-438. Disposition — hearing — order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) *order the department to evaluate the noncustodial parent as a possible caretaker;*

(c) *order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;*

(b)(d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(e)(e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(d)(f) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a *nonparent* relative or other individual who *has been evaluated is and* recommended by the department or a licensed child-placing agency designated by the court and ~~who~~ *who* is found by the court to be qualified to receive and care for the child;

(e)(g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(f)(h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of



the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

**Section 2.** Section 41-3-442, MCA, is amended to read:

**"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

*(b) continued temporary placement of the child with the noncustodial parent, superseding any existing custodial order;*

~~(b)(c)~~ termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

*(ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial order; or*

~~(ii)(iii)~~ appointment of a guardian pursuant to 41-3-607;

~~(e)(d)~~ long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

~~(d)(e)~~ appointment of a guardian pursuant to 41-3-444; or

~~(e)(f)~~ dismissal.

(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

**Section 3.** Section 41-3-445, MCA, is amended to read:

**"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(5) The court shall approve a specific permanency plan for the child and make written findings on:

- (a) whether the permanency plan is in the best interests of the child;
- (b) whether the department has made reasonable efforts to finalize the plan; and
- (c) other necessary steps that the department is required to take to effectuate the terms of the plan.

(6) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (7) and that does not require an expenditure of money by

the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(7) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) *permanent placement of the child with the noncustodial parent, superseding any existing custodial order;*

~~(b)~~(c) adoption;

~~(e)~~(d) appointment of a guardian pursuant to 41-3-444; or

~~(d)~~(e) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(8) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Approved March 27, 2007

## CHAPTER NO. 74

[SB 84]

AN ACT TRANSFERRING ADMINISTRATION OF CERTAIN FOREST RESERVE AND OTHER FEDERAL FUNDS FROM THE STATE AUDITOR TO THE DEPARTMENT OF ADMINISTRATION FOR ALLOCATION TO ENTITLED COUNTIES; AMENDING SECTIONS 17-3-211 AND 17-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 17-3-211, MCA, is amended to read:

**“17-3-211. Forest reserve money and other federal funds.** (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, and all acts subsequent to them, shall divide and distribute all forest reserve and Public Law 106-393 funds received by the state, plus interest earned, to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 30 days after receiving full payment, as directed by the ~~state auditor~~ *department of administration*.

(2) The forest reserve money and the Public Law 106-393 money must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 account, as appropriate.”

**Section 2.** Section 17-3-212, MCA, is amended to read:

**“17-3-212. Apportionment of forest reserve funds and other federal funds among counties.** (1) The forest reserve funds, all Public Law 106-393 funds, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the ~~state auditor~~ *department of administration*. The ~~state auditor~~ *department of administration* shall apportion all forest reserve funds, all Public Law 106-393 funds, and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties.”

**Section 3. Effective date.** [This act] is effective July 1, 2007.

Approved March 27, 2007

## CHAPTER NO. 75

[SB 85]

AN ACT REVISING THE CRIME OF ENDANGERING THE WELFARE OF CHILDREN BY INCLUDING METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; PROVIDING A PENALTY FOR METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; AND AMENDING SECTION 45-5-622, MCA.

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

**Section 1.** Section 45-5-622, MCA, is amended to read:

**“45-5-622. Endangering welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits

the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon the child's place of residence without the consent of the child's parents or guardian; or

(ii) engage in sexual conduct.

(3) *A person, whether or not the person is supervising the welfare of a child less than 18 years of age, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:*

(a) *produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine;*

(b) *possesses any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107 with intent to manufacture methamphetamine; or*

(c) *causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia.*

(3)(4) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision or control over the child to stop contacting the child if the ~~requester~~ requester believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (4) (5)(a).

(4)(5) (a) *Except as provided in subsection (5)(b), a person convicted of endangering the welfare of children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall*

be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

*(b) A person convicted under subsection (3) is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed 5 years and may be fined an amount not to exceed \$10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$25,000 or be imprisoned for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of subsection (3) does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.*

(5)(6) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(6)(7) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.”

Approved March 27, 2007

## CHAPTER NO. 76

[SB 90]

AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADJUST THE PER DIEM CHARGE FOR AN INSTITUTION MORE THAN ONCE A YEAR; AMENDING SECTION 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 53-1-404, MCA, is amended to read:

**“53-1-404. Department to review and establish per diem charge.** The per diem charge for the fiscal year must be reviewed on or before October 1 of each year by the department *and may be reviewed at additional times during the year as considered appropriate by the department.* If the review indicates that the budgeted costs of an institution have changed substantially since the last review, the per diem charge must be adjusted to compensate for those changes.”

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

Approved March 27, 2007

## CHAPTER NO. 77

[SB 126]

AN ACT REPEALING THE TERMINATION OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM AND THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, WHICH WILL AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTINUE TO FUND AND IMPLEMENT PROJECTS TO RESTORE AND ENHANCE FISHERIES HABITAT AND ENSURE THAT FUNDING FROM THE RESOURCE INDEMNITY TRUST FUND IS MAINTAINED; REPEALING

SECTION 5, CHAPTER 463, LAWS OF 1995, AND SECTIONS 6 AND 9, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the future fisheries improvement program and the bull trout and cutthroat trout enhancement program have proved to be effective voluntary programs to enhance Montana fisheries, including the historical habitats of native fish; and

WHEREAS, private landowners and anglers have found both programs to be effective tools for increasing fish populations; and

WHEREAS, it is important to the future of Montana's native fish, fisheries, and anglers to make the future fisheries improvement program and the bull trout and cutthroat trout enhancement program permanent.

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

**Section 1. Repealer.** Section 5, Chapter 463, Laws of 1995, and Sections 6 and 9, Chapter 529, Laws of 1999, are repealed.

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

Approved March 27, 2007

## CHAPTER NO. 78

[SB 136]

AN ACT REVISING THE MEETING FREQUENCY OF THE BOARD OF VETERANS' AFFAIRS; AND AMENDING SECTION 2-15-1205, MCA.

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

**Section 1.** Section 2-15-1205, MCA, is amended to read:

**"2-15-1205. Board of veterans' affairs — composition — quorum — voting — compensation — allocation.** (1) There is a board of veterans' affairs.

(2) (a) The board consists of 20 members. All members must be residents of this state. Eleven members are voting members, who must be confirmed by the senate, and nine members are nonvoting, ex officio members.

(b) The governor shall appoint 19 members in a manner that provides for staggered terms. The members are:

(i) five regional representatives, who must be voting members and who must have been honorably discharged from service in the military forces of the United States. Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.

(ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;

(iii) one tribal member, who must be an honorably discharged veteran and who is a voting member;



(iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.

(v) a representative of the office of state coordinator of Indian affairs, who is a nonvoting member;

(vi) a representative from the department of public health and human services, who is a nonvoting member;

(vii) a representative of the United States department of veterans affairs, who is a nonvoting member;

(viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;

(ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;

(x) three members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and

(xi) the director of the department of military affairs, who is a nonvoting member.

(c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

(3) A vacancy occurring on the board must be filled by the governor, subject to the conditions of subsection (2).

(4) A quorum is six voting members.

(5) A vote resulting in a tie is the same as a negative vote.

(6) Each voting member must receive meals, lodging, and travel expenses as provided for in 2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.

(7) The board shall meet at least ~~four~~ *three* times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.

(8) Each voting member may serve for a maximum of two terms. Each term is for 4 years.

(9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor

and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a).”

Approved March 27, 2007

## CHAPTER NO. 79

[SB 187]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY-MONTANA COMPACT.

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

**Section 1. United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified.** The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on [date of filing] is ratified. The compact is as follows:

### WATER RIGHTS COMPACT

#### STATE OF MONTANA

#### UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the Effective Date of This Compact to reserved water rights in the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory administered by the U.S. Department of Agriculture, Agricultural Research Service.

#### RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the United States Fort Keogh Livestock and Range Research Laboratory in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Agriculture, or a duly designated official of the United States Department of the Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

NOW THEREFORE, the State of Montana and the United States agree as follows:

#### ARTICLE I - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstracts" mean the copy of the documents entitled "Abstracts of United States Fort Keogh Livestock and Range Research Laboratory Water Rights" referenced in this Compact as Appendices 2, 3, 4, 6, and 7.

(2) "Acre-Feet per Year" means an annual quantity of water measured in acre-feet over a period of a year. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover 1 acre to a depth of 1 foot and is equivalent to 43,560 cubic feet of water.

(3) "Animal Unit" means a measure of livestock numbers, where one Animal Unit equals 1 beef cow, 1 beef cow and calf, 3 pigs, 5 sheep, or 300 chickens. One dairy cow or 1 horse equals 1.5 Animal Units.

(4) "Consumptive" means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Effective Date of This Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.

(7) "Groundwater" means water that is beneath the ground surface.

(8) "Parties" means the State of Montana and the United States.

(9) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(11) "Stock Use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, and chickens. This term does not include use of water for domestic animals, such as dogs or cats, or wild animals.

(12) "Supplemental Right" means a separate water right for the same purpose, owned by the United States, and used on a common place of use.

(13) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(14) “United States Fort Keogh Livestock and Range Research Laboratory” means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of April 15, 1924, 43 Stat. 99. The lands that comprise the United States Fort Keogh Livestock and Range Research Laboratory are depicted on the map attached as Appendix 1 to this Compact.<sup>2</sup>

(15) “Water Spreading” means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually nonperennial, watercourses by means of dams, dikes, or ditches or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

## ARTICLE II

### WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States’ federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory.

#### **A. Purpose of Reservation for the United States Fort Keogh Livestock and Range Research Laboratory.**

The United States Fort Keogh Livestock and Range Research Laboratory was created for the purpose of stock raising experiments and growing of forage crops in connection therewith. Act of April 15, 1924, 43 Stat. 99. The United States’ federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory shall be used only for purposes relating to its experimental research regarding stock raising and crop growing on United States Fort Keogh Livestock and Range Research Laboratory lands.

#### **B. Quantification.**

Subject to the terms of Article III, the United States shall have the right to water for the following purposes from the sources identified on United States Fort Keogh Livestock and Range Research Laboratory lands.

##### **1. Irrigation Use.**

#### **(a) Current Irrigation Use From the Yellowstone River — Water Court Basin 42KJ.**

(i) The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River in Water Court Basin 42KJ of 58 cubic feet per second for current irrigation use on 1,523 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 2 to this Compact. Provided that, the reserved right described in this subsection is a Supplemental Right to any United States’ water right under state law for irrigation use on United States Fort Keogh Livestock and Range Research Laboratory lands with a priority date senior to the reserved right described in this subsection.

(ii) The United States has a federal reserved water right for irrigation use by Water Spreading on Reservation Creek, a tributary of the Yellowstone River, in Water Court Basin 42KJ for current irrigation use on 450 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 3 to this Compact.

**(b) Current Irrigation Use From the Tongue River Drainage — Water Court Basin 42C.**

The United States has a federal reserved water right for irrigation use by Water Spreading on an unnamed tributary of the Tongue River in Water Court Basin 42C for current irrigation use on 203 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 4 to this Compact.

**(c) Future Irrigation Use From the Yellowstone River — Water Court Basin 42KJ.**

The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River, a tributary, or Groundwater in Water Court Basin 42KJ for future irrigation use on up to a total of additional 620 acres on United States Fort Keogh Livestock and Range Research Laboratory lands with a combined flow rate of up to a total additional 23 cubic feet per second to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

**2. Stock Use.**

**(a) Current Stock Use.**

The United States has federal reserved water rights for Consumptive use for stockwatering purposes at the locations identified in the table attached as Appendix 5 for the volume of water specified from each source, provided that the total current Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands shall not exceed the historic maximum of 3,000 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 6 to this Compact.

**(b) Future Stock Use.**

In addition to the current Stock Use described in Article II, section B.2.(a), the United States has federal reserved water rights for Consumptive use for stockwatering purposes at the same locations and the same volume of water as described in Article II, section B.2.(a) for future Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands not to exceed an additional 2,000 Animal Units.

**3. Administrative Uses.**

**(a) Current Administrative Uses.**

The United States has federal reserved rights for Consumptive use for current administrative uses on United States Fort Keogh Livestock and Range Research Laboratory lands totaling 26.70 Acre-Feet per Year. The specific elements of these rights are set forth in the Abstracts attached as Appendix 7 to this Compact.

**(b) Future Administrative Uses.**

The United States has federal reserved water rights from surface water or Groundwater for Consumptive use for future administrative uses up to a total additional volume of 18 Acre-Feet per Year to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The types of use of the United States' federal reserved water rights for administrative uses may include but are not limited to domestic, administrative, storage, dust abatement, reclamation, and research.

#### **4. Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on the United States Fort Keogh Livestock and Range Research Laboratory lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive use.

#### **5. Period of Use.**

(a) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(i) shall be from March 15 to November 19 of each year.

(b) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(ii) and B.1.(b) shall be from January 1 to December 31 of each year.

(c) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.2. through B.4. shall be from January 1 to December 31 of each year.

#### **6. Priority Date.**

The priority date for all federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory is April 15, 1924.

### ARTICLE III

### IMPLEMENTATION

#### **A. Abstracts.**

Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 2, 3, 4, 6, and 7 to this Compact, which specifically identify all of the United States' current use of water for the United States Fort Keogh Livestock and Range Research Laboratory described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

#### **B. Enforcement and Administration of Water Right.**

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter the United States Fort Keogh Livestock and Range Research Laboratory lands to collect data, inspect structures for the diversion and measurement of water, and

distribute the federal reserved water rights described in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the United States Fort Keogh Livestock and Range Research Laboratory including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter the United States Fort Keogh Livestock and Range Research Laboratory lands upon which a federal reserved water right is described in Article II for the purposes of data collection on United States Fort Keogh Livestock and Range Research Laboratory water diversions or water uses. The Department shall notify the United States by certified mail or in Person at least 24 hours prior to entry.

4. The federal reserved water right described in Article II, section B.1.(b) shall not be the basis of a call on a water right recognized under state law and shall not be enforceable by the United States in an administrative or judicial proceeding except as needed to protect against a call from a junior water right under state law.

### **C. Use of Federal Reserved Water Rights.**

#### **1. Federal Reserved Water Rights.**

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

#### **2. Development of Future Uses.**

The United States, without prior approval of the Department, may develop a future use after the Effective Date of This Compact as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b), provided that:

(a) the purpose of use is for the use authorized under Article II, sections B.1.(c), B.2.(b), or B.3.(b);

(b) the total quantity of water shall not exceed the amount set forth in Article II, sections B.1.(c), B.2.(b), or B.3.(b);

(c) the source of supply shall be restricted as set forth in Article II, section B.1.(c);

(d) any Groundwater development pursuant to Article II, section B.1.(c) in Section 8, Township 7 North, Range 47 East, Custer County, shall not interfere with the exercise of water right number 42C 183101-00 or 42C 183102-00; and

(e) the use shall not adversely affect a senior water right recognized under state law.

### **D. Change in Use of Federal Reserved Water Rights.**

#### **1. Irrigation Use.**

The United States may change its federal reserved water rights for irrigation use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the use of water is irrigation use;

(c) the total use shall not exceed the total acreage, and flow rate or volume described in Article II, sections B.1.(a) and B.1.(c) and the Abstracts attached as Appendices 2 and 3 to this Compact;

(d) the source of supply shall be restricted to the source of supply set forth in Article II, sections B.1.(a) and B.1.(c);

(e) the federal reserved water right for irrigation use described in Article II, section B.1.(b) shall not be subject to change; and

(f) the change shall not adversely affect a water right recognized under state law.

## **2. Stock Use.**

The United States may change its federal reserved water rights for Stock Use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the total Stock Use shall not exceed the amount of water or number of Animal Units described in Article II, section B.2.; and

(c) the change shall not adversely affect a water right recognized under state law.

## **3. Administrative Use.**

The United States may change its federal reserved water rights for administrative use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the total administrative use shall not exceed the amount of water described in Article II, section B.3.; and

(c) the change shall not adversely affect a water right recognized under state law.

## **4. Emergency Fire Suppression.**

The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.4, shall not be changed to any other use.

## **E. Reporting Requirements.**

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b);

2. changes in use as described in Article III, section D; and



3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.4.

#### ARTICLE IV

##### GENERAL PROVISIONS

###### **A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the United States Fort Keogh Livestock and Range Research Laboratory.3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

###### **B. General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;

2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the State and the United States or an Indian Tribe;

5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;

8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the United States Fort Keogh Livestock and Range Research Laboratory;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the United States Fort Keogh Livestock and Range Research Laboratory boundaries.

**C. Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

**D. Severability.**

The provisions of this Compact are not severable.

**E. Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

**F. Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture, the United States Fort Keogh Livestock and Range Research Laboratory Research Leader, and such other officials as the Secretary may designate in writing.

ARTICLE V

FINALITY OF COMPACT

**A. Binding Effect.**

1. The Effective Date of This Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the effective date, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

**B. Filing Compact with State Court.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this

matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

#### C. Dismissal of Filed Claims.

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 8 of this Compact for the United States Fort Keogh Livestock and Range Research Laboratory. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

#### D. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the United States Fort Keogh Livestock and Range Research Laboratory land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of This Compact. On the Effective Date of This Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

#### E. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved March 27, 2007

## CHAPTER NO. 80

[SB 188]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION-MONTANA COMPACT.

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

**Section 1. United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified.** The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station, and filed with the secretary of state of the State of Montana under the provisions of 85-2-702, MCA, on [date of filing] is ratified. The compact is as follows:

#### WATER RIGHTS COMPACT

##### STATE OF MONTANA

#### UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION

This Compact is entered into by the State of Montana ("State") and the United States of America ("United States") to settle for all time any and all claims existing on the Effective Date of this Compact to reserved water rights in the State for the United States Sheep Experiment Station ("U.S. Sheep Experiment Station") administered by the United States Department of Agriculture, Agricultural Research Service.

##### RECITALS

WHEREAS, the State, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State, including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the U.S. Sheep Experiment Station in the State;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, the Secretary of Agriculture, or a duly designated official of the United States Department of Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a).

NOW, THEREFORE, the State and the United States agree as follows:

##### ARTICLE I

##### DEFINITIONS

For purposes of this Compact only, the following definitions apply:

(1) "Abstracts" means the copy of the document entitled "Abstracts of U.S. Sheep Experiment Station Water Rights" referenced in this Compact as Appendix 3.

(2) "Consumptive" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return

delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

(3) “Department” means the Montana Department of Natural Resources and Conservation or its successor.

(4) “Effective Date of this Compact” means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.

(5) “Groundwater” means water that is beneath the ground surface.

(6) “Parties” means the State and the United States.

(7) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(8) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the Department or the Director’s designee.

(9) “United States” means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of Agriculture or the Secretary’s designee.

(10) “U.S. Sheep Experiment Station” means those lands within Montana that were withdrawn and reserved by Executive Order No. 3767, dated December 19, 1922, as depicted on the map attached as Appendix 1 to this Compact. For purposes of this Compact, it does not include portions of the U.S. Sheep Experiment Station located in the State of Idaho that the United States owns and the U.S. Department of Agriculture, Agricultural Research Service, administers.

## ARTICLE II WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States’ federal reserved water rights for the U.S. Sheep Experiment Station.

### **A. Purpose of Reservation for the U.S. Sheep Experiment Station.**

The U.S. Sheep Experiment Station was created for agricultural experiment purposes, and the land in Montana was set aside for experimental sheep grazing by Executive Order No. 3767, dated December 19, 1922.

### **B. Quantification.**

Subject to the terms of Article III, the United States has federal reserved water rights from sources located on the U.S. Sheep Experiment Station as described below.

#### **1. Current Stockwater Use.**

The United States has federal reserved rights on U.S. Sheep Experiment Station lands for Consumptive use for stockwatering purposes at the 53 locations identified in the table attached as Appendix 2 for the volume of water identified. Abstracts for each of these federal reserved water rights are attached

as Appendix 3 to this Compact. In the event of a discrepancy between the summary of U.S. Sheep Experiment Station water rights in Appendix 2 and the Abstracts contained in Appendix 3, the Abstracts in Appendix 3 control. The period of use of the United States' water rights for Consumptive use set forth in Article II, section B.1., shall be from May 1 to October 31 of each year.

## **2. Future Uses.**

In addition to the current stockwater uses identified in Article II, section B.1., the United States has a federal reserved water right to develop uses of surface water or Groundwater consistent with Article II, section B.5., to fulfill the purposes of the U.S. Sheep Experiment Station up to a total additional volume of 15 acre feet per year for uses within the U.S. Sheep Experiment Station.

## **3. Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the U.S. Sheep Experiment Station. The United States has a federal reserved water right to divert or withdraw water for fire suppression on U.S. Sheep Experiment Station lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for current or future uses described in Article II, section B.1. and 2.

## **4. Priority Date.**

The priority date for all federal reserved water rights for the U.S. Sheep Experiment Station is December 19, 1922.

## **5. Purposes.**

The United States' reserved water rights for the U.S. Sheep Experiment Station shall be used for purposes as described in Article II, section A. The types of use may include but are not limited to: stockwater, domestic, irrigation, storage, dust abatement, reclamation, and research.

# ARTICLE III IMPLEMENTATION

## **A. Abstracts.**

Abstracts for all the United States' federal reserved water rights for current stockwater uses are set forth in Appendix 3. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

## **B. Enforcement and Administration of Water Right.**

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner, or other official appointed by a court of competent jurisdiction, may enter the U.S.

Sheep Experiment Station to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the U.S. Sheep Experiment Station, including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter the U.S. Sheep Experiment Station lands upon which a federal reserved water right is described in Article II for the purposes of data collection on U.S. Sheep Experiment Station water diversions or water uses. The Department shall notify the United States by certified mail or in person at least 72 hours prior to entry.

#### **C. Use of Reserved Water Rights.**

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the U.S. Sheep Experiment Station.

#### **D. Change in Use.**

1. The United States may make a change in the use of its reserved water rights described in Article II, sections B.1. and 2., provided that:

(a) the use must fulfill the purposes of the U.S. Sheep Experiment Station described in Article II, section A;

(b) the total use shall not exceed the amount described in this Compact; and

(c) the change shall not adversely affect a senior water right recognized under state law.

2. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.3., shall not be changed to any other use.

#### **E. Reporting Requirements.**

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, section B.2.;

2. changes in use as described in Article III, section D; and

3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.3.

### **ARTICLE IV**

#### **GENERAL PROVISIONS**

#### **A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived

water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the U.S. Sheep Experiment Station.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

#### **B. General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;

2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use;

4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the U.S. Sheep Experiment Station; 11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the U.S. Sheep Experiment Station boundaries.



**C. Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

**D. Severability.**

The provisions of this Compact are not severable.

**E. Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

**F. Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture, the U.S. Sheep Experiment Station Director, and such other officials as the Secretary may designate in writing.

**ARTICLE V****FINALITY OF COMPACT****A. Binding Effect.**

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the Effective Date of this Compact, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3) and 85-2-703, MCA, this Compact shall be voidable by action of and without prejudice to either party.

**B. Filing Compact with State Court.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666 for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

### C. Dismissal of Filed Claims.

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 4 of this Compact for the U.S. Sheep Experiment Station. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

### D. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the U.S. Sheep Experiment Station land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State for the U.S. Sheep Experiment Station. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right under Montana state law. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

### E. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF, the representatives of the State of Montana and the United States have signed this Compact on the \_\_\_\_ day of \_\_\_\_\_, 2007.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved March 27, 2007

## CHAPTER NO. 81

[HB 13]

AN ACT GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE CLASSIFICATION AND COMPENSATION; REQUIRING THAT EMPLOYEES BE PLACED ON THE NEW BROADBAND PAY PLAN; PROVIDING FOR IMPLEMENTATION OF THE BROADBAND PAY PLAN BY STATE AGENCIES; REPLACING STATUTORY SALARIES FOR LEGISLATORS AND CERTAIN PUBLIC OFFICIALS WITH SALARIES BASED UPON THE BROADBAND PAY PLAN; INCREASING THE EMPLOYER CONTRIBUTION FOR GROUP BENEFITS; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-6-110, 2-15-131, 2-18-101, 2-18-201, 2-18-202, 2-18-203, 2-18-204, 2-18-206, 2-18-207, 2-18-301, 2-18-303, 2-18-304, 2-18-703, 2-18-1011, 2-18-1204, 5-2-301,

5-2-302, 13-37-106, 15-2-102, 39-51-301, AND 44-1-504, MCA; REPEALING SECTIONS 2-18-205 AND 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

**Section 1.** Section 2-6-110, MCA, is amended to read:

**“2-6-110. Electronic information and nonprint records — public access — fees.** (1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency’s actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly *market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312* for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor’s office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer’s property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term “agency” has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information.”

**Section 2.** Section 2-15-131, MCA, is amended to read:

**“2-15-131. Rights of state personnel.** Unless otherwise provided in this chapter, each state officer or employee affected by the reorganization of the executive branch of state government under this chapter is entitled to all rights ~~which he~~ possessed as a state officer or employee before the effective date of the applicable part of this chapter, including rights to tenure in office and of ~~rank or grade pay~~, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of this chapter or an amendment to this chapter.”

**Section 3.** Section 2-18-101, MCA, is amended to read:

**“2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) “Agency” means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

~~(2) “Anniversary date”, except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.~~

(3)(2) “Base salary” means the amount of compensation paid to an employee, excluding:

- (a) state contributions to group benefits provided in 2-18-703;
- (b) overtime;
- (c) fringe benefits as defined in 39-2-903; and
- (d) the longevity allowance provided in 2-18-304.

(3) “Benchmark” means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation.

(4) “Board” means the board of personnel appeals established in 2-15-1705.

(5) “Broadband classification plan” means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(6) *“Broadband pay plan” means a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.*

~~(5) “Class” means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.~~

~~(6) “Class series benchmark” means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.~~

~~(7) “Class specification” means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.~~

(8)(7) *“Compensation” means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.*

(9)(8) *“Competencies” means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.*

(10)(9) *“Department” means the department of administration created in 2-15-1001.*

(11)(10) (a) Except in 2-18-306, *“employee” means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.*

(b) The term does not include a student intern.

~~(12)(11) “Entry salary” means the entry-level base salary for each grade provided in 2-18-312 occupational pay range.~~

~~(13) “Grade” means the number assigned to a pay range within a pay schedule in part 3 of this chapter.~~

(12) *“Job evaluation factor” means a measure of the complexities of the predominant duties of the job.*

~~(14)(13) “Job sharing” means the sharing by two or more persons of a position.~~

~~(15) “Market ratio” means an employee’s base salary divided by the market salary for the employee’s pay grade.~~

(16)(14) *“Market salary” means the midpoint in an occupational pay grade provided in 2-18-312 range, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department’s salary survey of the relevant labor market.*

(15) *“Occupation” means a generalized family of jobs having substantially similar duties and requiring similar qualifications, education, and experience.*

(16) *“Occupational pay range” means a range of pay, including an entry salary, market salary, and maximum salary, for a specific occupation within a*

*specific pay band. An occupation may have more than one occupational pay range. An occupational pay range must fit within the appropriate pay band.*

(17) "Pay band" means a wide salary range covering a number of different occupations.

(17)(18) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

(18)(19) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(19)(20) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20)(21) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21)(22) "Program" means a combination of planned efforts to provide a service.

(22)(23) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(23)(24) "Short-term worker" means a person who:

- (a) is hired by an agency for an hourly wage established by the agency;
- (b) may not work for the agency for more than 90 days in a continuous 12-month period;
- (c) is not eligible for permanent status;
- (d) may not be hired into another position by the agency without a competitive selection process; and
- (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

(24)(25) "Student intern" means a person who:

- (a) has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency in a student intern position;
- (b) is not eligible for permanent status;
- (c) is not eligible to become a permanent employee without a competitive selection process;
- (d) must be covered by the hiring agency's workers' compensation insurance;
- (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and
- (f) may be discharged without cause.

(25)(26) "Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative

worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace.

(26)(27) “Temporary employee” means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process.”

**Section 4.** Section 2-18-201, MCA, is amended to read:

**“2-18-201. ~~Development~~ *Implementation and maintenance of personnel broadband classification plan.*** (1) The department shall ~~develop~~ *implement and maintain* a ~~personnel broadband~~ *broadband* classification plan for all state positions and classes of positions in state service following hearings involving affected employees and employee organizations, except those exempt in 2-18-103 and 2-18-104.

(2) The legislative council shall in a like manner ~~develop~~ *implement and maintain* a *broadband* classification plan for employees of the legislative branch, other than those of the office of consumer counsel.”

**Section 5.** Section 2-18-202, MCA, is amended to read:

**“2-18-202. ~~Guidelines for classification.~~ *Guidelines for classification.*** (1) In providing for the *broadband* classification plan, the department shall group all positions in the state service into defined ~~classes~~ *occupations* based on similarity of ~~duties work~~ *performed*, responsibilities assumed, and ~~complexity~~ *difficulty* of work, ~~required knowledge, and required skills. so that:~~

(a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class;

(b) the same title can be used to identify each position in the class;

(e)(2) ~~similar~~ *Similar* pay may be provided under the same conditions with equity to each position within the class ~~to individuals with the same occupation within an occupational pay range.~~

(2) ~~A class may consist of only one position.”~~

**Section 6.** Section 2-18-203, MCA, is amended to read:

**“2-18-203. ~~Review of positions — change in classification pay band allocation.~~ *Review of positions — change in classification pay band allocation.*** (1) The department shall ~~continuously~~ review ~~all the job evaluation factor of~~ positions on a regular basis and ~~may~~ *may* adjust ~~classifications the occupations for the positions~~ to reflect significant changes in duties and responsibilities. ~~In the event that~~ *If* adjustments are to be made to ~~class specifications, class series benchmarks, or criteria used for allocating positions to classes pay bands~~ affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for ~~positions factored in the blue-collar and teachers’ classification plans pay plan,~~ *positions factored in the blue-collar and teachers’ classification plans pay plan,* which plans must remain a mandatory negotiable ~~items~~ *item* under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to appeal the allocation or reallocation of a position to a ~~class pay band.~~ *class pay band.* The ~~grade~~

*pay band* assigned to a ~~class~~ *an occupation* and ~~factors assigned to class series~~ benchmarks are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a ~~classification~~ *pay band allocation* appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed.”

**Section 7.** Section 2-18-204, MCA, is amended to read:

**“2-18-204. Determination of number and ~~classes~~ *occupations of employees in each agency.*** (1) ~~Based on documentation to be submitted by each agency, the~~ *The* department shall determine the ~~classes of~~ *occupations* for positions of employees of ~~in each agency or program thereof~~ *in each agency* ~~before the beginning of each fiscal year.~~ At any time, upon request of ~~the~~ *an* agency, the department may amend the ~~classes of positions of employees in any list of occupations for the requesting agency or program thereof.~~

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program ~~thereof~~ prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program ~~thereof~~.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director.”

**Section 8.** Section 2-18-206, MCA, is amended to read:

**“2-18-206. List of positions maintained.** To facilitate state budgeting and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each ~~class~~ *occupation*, and the salaries or wages being paid, appropriated, or proposed for each ~~class~~ *position.*”

**Section 9.** Section 2-18-207, MCA, is amended to read:

**“2-18-207. Department authorization for increase of salary or wage of class *occupational pay range.*** An agency may not increase the ~~salary or wage occupational pay range~~ of any ~~class of positions~~ *occupation* without authorization of the department.”

**Section 10.** Section 2-18-301, MCA, is amended to read:

**“2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based on an analysis of the labor market as provided by the department in a *biennial* salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments ~~and pay schedules~~ provided for in 2-18-303 ~~and in 2-18-312~~ supersede any other plan or systems established through collective bargaining after the adjournment of the ~~59th~~ legislature.



(4) Pay levels provided for in ~~2-18-312~~ *2-18-303* may not be increased through collective bargaining after adjournment of the ~~59th~~ legislature.

(5) Total funds required to implement the pay ~~schedules~~ *increases* provided for in ~~2-18-312~~ *2-18-303* for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~59th~~ legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) *The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary. The department shall adopt an entry salary, market salary, and maximum salary for each occupation within each pay band. These salary ranges are also known as occupational pay ranges.*

(8) *Based on the biennial salary survey, the department shall:*

(a) *identify current market rates for all occupations;*

(b) *establish pay band levels; and*

(c) *set occupational pay ranges for all occupations.*

~~(7)(9)~~ The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

~~(8)(10)~~ Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system.”

**Section 11.** Section 2-18-303, MCA, is amended to read:

**“2-18-303. Procedures for using administering broadband pay schedules plan.** (1) ~~The pay schedule provided in 2-18-312 must be implemented as follows:~~

~~(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.~~

~~(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (5) through (9).~~

~~(e)(1) (a) On the first day of the first complete pay period in fiscal year 2006 2008, each employee is entitled to the amount of the employee’s base salary as it was on June 30, 2005 2007.~~

~~(d)(b) Effective on the first day of the first complete pay period that includes an employee’s anniversary date during the fiscal year ending June 30, 2006 October 1, 2007, the base salary of each employee must be increased by 3.5% or \$1,005, based upon 2,080 annual hours in a pay status, whichever is greater 3%. Effective on the first day of the first complete pay period that includes an employee’s anniversary date during the fiscal year ending June 30, 2007 October 1, 2008, the base salary of each employee must be increased by 4% or \$1,188, based upon 2,080 annual hours in a pay status, whichever is greater 3%. For employees hired on or before September 30, 2005, the anniversary date is October 1.~~

(2) (a) *Effective October 1, 2007, and October 1, 2008, the appropriation that represents 6/10 of 1% of the salary for each full-time equivalent position must be allocated to each agency to distribute to its employees for reasons including but not limited to market progression, job performance, or employee competencies.*

(b) *To the extent that this distribution applies to employees within a collective bargaining unit, the distribution is a negotiable subject under Title 39, chapter 31. The amount of money allocated to agencies and available to distribute to members of each bargaining unit must be determined by multiplying the salaries of the total number of full-time equivalents in the bargaining unit by 6/10 of 1%.*

(c) *The allocation described in subsection (2)(b) may not be distributed to members of a collective bargaining unit until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a pay addendum to the collective bargaining agreement specifying the distribution.*

(e)(3) An employee's base salary may be no less than the *pay band* entry salary for the employee's assigned *grade occupation*.

~~(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those employees who are members of collective bargaining units that have collectively bargained to participate in a separate or alternative classification and pay plan or who are covered under subsections (5) and (6) of this section.~~

~~(3)(4) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a *the* pay increase provided for in subsection (1)(b) until the employer's collective bargaining representative receives written notice that the employee's *collective* bargaining unit has ratified a *completely integrated* collective bargaining agreement.~~

~~(ii) If ratification of a *completely integrated* collective bargaining agreement, as required by subsection (3)(a)(i) (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.~~

~~(b) Methods of administration *not inconsistent* consistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided for in 2-18-312 and this section may be provided for in collective bargaining agreements.~~

~~(4)(5) The current wage or salary of an employee may not be reduced by the implementation of the *broadband* pay schedules plan provided for in 2-18-312.~~

~~(5) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.~~

~~(6) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.~~

~~(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.~~

~~(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.~~

~~(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.~~

(9)(6) (a) Montana highway patrol officer base salaries and biennial salary increases must be established through ~~an alternative pay and classification~~ *the broadband pay plan*. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) ~~The department of justice shall submit the salary survey must be submitted~~ to the office of budget and program planning as a part of the information required by 17-7-111.

(d) (i) ~~Except as provided in subsection (9)(d)(ii), the~~ *The salary survey and plan must be completed at least 6 months before the start of each regular legislative session.*

(ii) ~~The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007."~~

**Section 12.** Section 2-18-304, MCA, is amended to read:

**"2-18-304. Longevity allowance.** (1) (a) In addition to the compensation provided for in 2-18-303 ~~or 2-18-312~~, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) In addition to the longevity allowance provided under subsection (1)(a), each employee who has completed *10 years of uninterrupted state service*, 15 years of uninterrupted state service, or ~~completed~~ 20 years of uninterrupted state service must receive an additional 0.5% of the employee's base salary for each of those additional 5 years of uninterrupted service.

(c) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."

**Section 13.** Section 2-18-703, MCA, is amended to read:

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~\$460 a month for the period from July 2005 through December 2005, \$506 a month for the period from January 2006 through December 2006, and \$557 a month for from January 2007 through December 2007, \$590 a month from January 2008 through December 2008, and \$626 for January 2009~~ and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~\$506 a month for the period from July 2005 through June 2006 and \$557 a month for from July 2006 through June 2007, \$590 a month from July 2007 through June 2008, and \$626 for July 2008~~ and for each succeeding month. If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.”

**Section 14.** Section 2-18-1011, MCA, is amended to read:

**“2-18-1011. ~~Classification~~ Pay band allocation or compensation grievance — retaliation — hearing on complaint.** (1) An employee or ~~his~~ *the employee’s* representative affected by the operation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee’s supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board ~~shall~~ *is also be* the basis for a complaint and ~~shall entitle~~ *entitles* the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action ~~attempting that attempts~~ *to revise the class specifications of or series of class specifications determination of a pay band involving and that involves* an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way ~~which that~~ *would adversely affect the employee prior to final resolution or entry of a final order with respect thereto to the action* is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless ~~such~~ *the* review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.”

**Section 15.** Section 2-18-1204, MCA, is amended to read:

**“2-18-1204. Salary and benefits protection — employee transfer.** An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(1) the same hourly salary as previously received if the new position is ~~at the same grade level in the same occupational pay range~~ or higher as the one previously held;

(2) retain all accrued sick leave credits;

(3) retain, cash out, or use accrued vacation leave credits to extend the employee’s effective layoff date; and

(4) relocation expenses as provided in agency policy.”

**Section 16.** Section 5-2-301, MCA, is amended to read:

**“5-2-301. Compensation and expenses for members while in session.**

(1) Legislators are entitled to a salary commensurate to that of the daily rate of ~~an entry grade 10 classified state employee for an employee earning \$10.33 an hour in effect~~ when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. *The hourly rate must be adjusted by any statutorily required pay increase.* The president of the senate and the speaker of the house must receive an additional \$5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost of living increase to reflect inflation that is calculated pursuant to 15-6-134, or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.”

**Section 17.** Section 5-2-302, MCA, is amended to read:

**“5-2-302. Compensation and expenses when legislature not in session.** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion thereof of a 24-hour period, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, *he the legislator* may not be compensated for the additional day."

**Section 18.** Section 13-37-106, MCA, is amended to read:

**"13-37-106. Salary.** (1) The commissioner of political practices ~~is entitled to receive an annual salary of \$31,551 and beginning October 1, 1997, is entitled to receive a salary equal to the market salary of a grade 18 classified employee as provided in 2-18-312~~ *within the occupational pay range, as defined in 2-18-101, determined by the department of administration as provided in subsection (4).*

(2) The commissioner is also entitled to longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18.

(3) The salary of the commissioner may not be reduced during the term for which the commissioner is appointed.

(4) *The department of administration shall determine the appropriate occupation and occupational pay range for the commissioner of political practices in the same manner that it determines the occupation and occupational pay range for employees in state government pursuant to Title 2, chapter 18.*

(5) *The governor shall set the salary of the commissioner of political practices within the occupational pay range established by the department of administration.*

(6) *The commissioner of political practices must receive pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304."*

**Section 19.** Section 15-2-102, MCA, is amended to read:

**"15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person ~~must shall~~ possess knowledge of the subject of taxation and skill in matters ~~pertaining thereto relating to taxation. No person so appointed~~ *A member may not hold any other state office or any office under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and shall may not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person's duties. The state tax appeal board is transferred allocated to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.*

(2) State tax appeal board members ~~shall must~~ be paid a salary ~~equivalent to that of a grade 17 salary as provided in 2-18-312~~ *within the occupational pay range, defined in 2-18-101, determined by the department of administration as provided in subsection (3).* State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for ~~classified~~ state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must ~~have receive~~ an additional 5%

added to the *in* salary. All members of the board shall *must* receive travel expenses as provided for in 2-18-501 through 2-18-503, ~~as amended~~, when away from the capital on official business.

(3) *The department of administration shall determine the appropriate occupation and occupational pay range for the state tax appeal board members in the same manner that it determines the occupation and occupational pay range for employees in state government pursuant to Title 2, chapter 18.*

(4) *The governor shall set the salary of the state tax appeal board members within the occupational pay range established by the department of administration.*”

**Section 20.** Section 39-51-301, MCA, is amended to read:

**“39-51-301. Administration — duties and powers of department.** (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, ~~rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights~~ under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(7) (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution



functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor.”

**Section 21.** Section 44-1-504, MCA, is amended to read:

**“44-1-504. Special revenue account to partially fund highway patrol officers’ salaries — statutory appropriation.** (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to ~~2-18-303(10)~~ *2-18-303(6)*:

~~(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;~~

~~(b)(a) the base salary and associated operating costs for new highway patrol officer positions created after June 30, 2006; and~~

~~(e)(b) biennial salary increases after June 30, 2006, for highway patrol officers.”~~

**Section 22. Appropriations for broadband classification plan pay implementation.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in 2-18-303 and 2-18-703:

	Fiscal Year 2008		Fiscal Year 2009	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	\$200,389	\$44,742	\$462,984	\$92,250
Consumer Council		\$12,502		\$28,965
Judicial Branch	\$601,880	\$27,673	\$1,437,967	\$66,623
Executive Branch	\$6,295,995	\$9,732,127	\$14,945,346	\$22,195,176
University System	\$6,721,057	\$128,372	\$15,194,084	\$279,930
Total	\$13,819,321	\$9,945,416	\$32,040,381	\$22,662,994

(2) The following money is appropriated for the biennium to the office of budget and program planning to be distributed, on October 1 of the fiscal year, to the entities listed in subsection (1) based upon the ratio of FTE in each entity to the ratio of state FTE to be used for market progression and pay for performance or competency:

	Fiscal Year 2008		Fiscal Year 2009	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	\$30,883	\$6,315	\$74,329	\$13,973
Consumer Council		\$2,030		\$4,817
Judicial Branch	\$97,429	\$4,539	\$231,499	\$10,767
Executive Branch	\$935,251	\$1,393,501	\$2,237,827	\$3,297,003
University System	\$944,684	\$15,629	\$2,210,575	\$37,157
Total	\$2,008,247	\$1,422,014	\$4,754,230	\$3,363,717

(3) The following money is appropriated to move employee pay to a minimum of 80% of the market salary for each occupational wage range after pay adjustments are made in October 2007. The appropriation is allocated as follows:

	Fiscal Year 2008		Fiscal Year 2009	
	General Fund	Other Funds	General Fund	Other Funds
Judicial Branch	\$148,750	\$33,690	\$198,333	\$44,919
Executive Branch	\$1,097,186	\$730,365	\$1,462,913	\$973,820
Total	\$1,245,936	\$764,055	\$1,661,246	\$1,018,739

(4) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

	Fiscal Year 2008			
	General Fund	State Special	Federal Special	Proprietary
Personal Services Contingency	\$3,000,000	\$2,400,000	\$500,000	\$100,000

(5) The following money is appropriated for the biennium to the department of administration for a labor-management training initiative:

	Fiscal Year 2008
	General Fund
Labor-Management Training Initiative	\$75,000

**Section 23. Repealer.** Sections 2-18-205 and 2-18-312, MCA, are repealed.

**Section 24. Effective dates.** (1) [Sections 1 through 11, 13 through 23, and 25 and this section] are effective July 1, 2007.

(2) [Section 12] is effective on the first day of the first full pay period in fiscal year 2008.

**Section 25. Applicability.** (1) [Section 12] applies to all current state employees who have 10 or more years of uninterrupted service.

(2) [Sections 16 and 17] apply to legislators for the legislative session convening in January 2009.

Approved March 28, 2007

## CHAPTER NO. 82

[SB 16]

AN ACT SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE ELECTORATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1. Tax levy for university system.** There is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills for the support, maintenance, and improvement of the Montana university system. The funds raised from the levy must be deposited in the state special revenue fund.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to section 1.

**Section 3. Effective dates.** (1) Except as provided in subsection (2), this act is effective upon approval by the electorate.

(2) If approved by the electorate, section 1 is effective January 1, 2009.

**Section 4. Termination.** Section 1 terminates January 1, 2019.

**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 2008 by printing on the ballot the full title of this act and the following:

- FOR imposing a levy of 6 mills for the support of the Montana university system.
- AGAINST imposing a levy of 6 mills for the support of the Montana university system.

## CHAPTER NO. 83

[HB 28]

AN ACT REVISING LAWS GOVERNING SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE; SUBJECTING UNLICENSED DRIVERS TO SUSPENSION OR REVOCATION OF THE PRIVILEGE TO APPLY FOR A DRIVER'S LICENSE; REVISING THE OFFENSE OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; AMENDING SECTIONS 61-1-101, 61-5-203, AND 61-5-212, 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 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 must 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) “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.

(5) “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.

(6) “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.

(7) (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 (7):

(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.

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

(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "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.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(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 (11)(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.

(12) "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.

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

(14) "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.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "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.

(17) "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.

(18) "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.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "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.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "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.

(23) "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.

(24) "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.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "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.

(28) "Mobile home" or "house trailer" has the meaning provided in 15-1-101.

(29) (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.

(30) (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.

(31) (a) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. 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.

(32) (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.

(33) "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.

(34) (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.

(35) (a) "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 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.

(36) "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.

(37) "Nonresident" means a person who is not a resident of this state.

(38) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car 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.

(39) (a) "Off-highway vehicle" means a self-propelled vehicle used 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) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

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

(41) "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.

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

(43) "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.

(44) "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.

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

(46) (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.

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

(48) (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.

(49) "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50) "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.

(51) "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, or pole trailer 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.

(52) "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.

(53) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54) "Revocation" means ~~that the~~ *termination by action of the department of a person's driver's license, and 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 are terminated* ~~and~~ may not be renewed, ~~or~~ 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.

(55) "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.

(56) (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.

(57) "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.

(58) "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.

(59) "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.

(60) (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.

(61) (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.

(62) (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.

(63) "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.

(64) "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.

(65) "Suspension" means ~~that the temporary withdrawal by action of the department of a person's driver's license, and privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license are temporarily withdrawn, but only during the~~ *temporary withdrawal by action of the department of a person's driver's license, and privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license are temporarily withdrawn, but only during the for a period of suspension time designated by law.*

(66) "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.

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

(68) (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.

(69) "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.

(70) "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.

(71) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(72) "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.

(73) "Under the influence" has the meaning provided in 61-8-401.

(74) "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.

(75) "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.

(76) (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.

(77) "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.

(78) "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.

(79) "Wholesaler" means a person, firm, partnership, association, or corporation 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, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

**Section 2.** Section 61-5-203, MCA, is amended to read:

**"61-5-203. Suspending privileges of nonresidents and unlicensed persons.** (1) The privilege of driving a motor vehicle on the highways of this state given to a nonresident *pursuant to 61-5-104(2) through (4)* is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter ~~may be suspended or revoked~~.

(2) *An unlicensed person's privilege to apply for and be issued a driver's license in this state is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter.*"

**Section 3.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable.** (1) (a) A person commits the offense of driving a motor vehicle during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to ~~drive or apply for and be issued a driver's license~~ is suspended or revoked in this state or any other state; or

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle ~~under federal regulations or from obtaining a commercial driver's license~~.

(b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500, except that if the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) ~~(a) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle~~

~~while the person's driver's license or privilege to drive was suspended or revoked shall extend the period of suspension or revocation for an additional 1-year period.~~

~~(b)(a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.~~

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

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

**Section 5. Retroactive applicability.** [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to any suspension or revocation imposed against an unlicensed person prior to [the effective date of this act].

Approved March 30, 2007

## CHAPTER NO. 84

[HB 31]

AN ACT REVISING NEW VEHICLE WARRANTY LAWS BY INCREASING THE WEIGHT LIMIT FOR TRUCKS EXEMPT FROM THE DEFINITION OF "MOTOR VEHICLE" FROM 10,000 POUNDS TO 15,000 POUNDS; INCREASING CONSUMER AND MANUFACTURER ARBITRATION FILING FEES; AMENDING SECTIONS 61-4-501 AND 61-4-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-4-501, MCA, is amended to read:

**“61-4-501. Definitions.** For purposes of this part, the following definitions apply:

(1) “Collateral charge” means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) “Consumer” means the purchaser *or lessee*, other than for purposes of resale *or lease*, of a *passenger* motor vehicle *used for personal, family, or household purposes* that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations ~~by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.~~ *The term includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the passenger motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.*

(3) “Incidental damage” means incidental and consequential damage as defined in 30-2-715.

(4) “Manufacturer” has the meaning applied to that word in 61-4-201.

(5) (a) “Motor vehicle” means a vehicle, including the nonresidential portion of a motor home, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.

(b) The term does not include:

(i) a truck with ~~10,000~~ *15,000* pounds or more gross vehicle weight rating; or

(ii) components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) “Reasonable allowance for use” is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the motor vehicle is not out of service because of nonconformity. The reasonable allowance for use must be computed by multiplying the total contract price of the motor vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the motor vehicle traveled prior to the manufacturer’s acceptance of its return.

(7) “Warranty period” means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier.”

**Section 2.** Section 61-4-517, MCA, is amended to read:

**“61-4-517. Implementation of arbitration.** (1) A consumer may initiate a request for arbitration by filing a notice with the department. The consumer shall file, on a form prescribed by the department, any information considered relevant to the resolution of the dispute and shall return the form, along with a \$50 \$100 filing fee, within 5 days after receiving the form. The form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department determines that a complaint does not allege a warranty violation, it shall refund the filing fee.

(3) Upon acceptance of a complaint, the department shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department, any information considered relevant to the resolution of the dispute. The manufacturer shall return the form within 15 days of receipt, with a filing fee of ~~\$250~~ \$750.

(4) Fees collected under this section must be deposited in a special revenue account for the use of the department in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department's arbitration procedures are used."

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

Approved March 30, 2007

## CHAPTER NO. 85

[HB 51]

AN ACT FORMALLY ELIMINATING STATE ADMINISTRATION OF THE MONTANA CONSERVATION CORPS BY REPEALING OBSOLETE STATUTES THAT PLACE THE MONTANA CONSERVATION CORPS WITHIN THE PARKS DIVISION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, SUBJECT TO THE OVERSIGHT OF THE OFFICE OF COMMUNITY SERVICE; AMENDING SECTION 90-14-103, MCA; REPEALING SECTIONS 23-1-301, 23-1-302, 23-1-303, 23-1-311, 23-1-312, 23-1-313, AND 23-1-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in 1989, the Montana Conservation Corps was statutorily placed under the Parks Division of the Department of Fish, Wildlife, and Parks, subject to the oversight of the Office of Community Service; and

WHEREAS, in about 1993, the Montana Conservation Corps was reorganized as a nonprofit organization and removed from direct state governmental oversight, yet the statutes related to the Montana Conservation Corps were not addressed to reflect the revised status of the Montana Conservation Corps; and

WHEREAS, it is appropriate to repeal the obsolete statutes to accurately reflect the current purpose and structure of the Montana Conservation Corps.

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

**Section 1.** Section 90-14-103, MCA, is amended to read:

**"90-14-103. Office of community service.** (1) There is an office of community service, which is headed by a director and established in the office of the governor.

(2) The purpose of this office is to:

(a) renew the ethic of civic responsibility in the state;

(b) encourage the citizens of the state, regardless of age or income, to engage in full-time or part-time service to the state;



(c) call young people to serve in projects that will benefit the state and improve their life chances through the acquisition of literacy, job skills, and interpersonal skills;

(d) build on the existing organizational framework of state and local governmental entities to expand full-time and part-time service opportunities in a wide variety of programs for all citizens, particularly youth and older Montanans;

(e) involve participants in activities that would not otherwise be performed by employed workers; and

(f) establish programs to accomplish labor-intensive improvements to public or low-income properties or to provide services for the benefit of the state, its communities, and its people through service contracts that specify the work to be performed.

(3) The director must be appointed by the governor, after consultation with the commission. The director serves at the pleasure of the governor.

(4) The director shall, with the advice of the commission, assist the governor in the planning, coordination, operation, and evaluation of programs within state government or under grants, donations, bequests, or other resources received by and administered through state government for Montana community services.

(5) The director is responsible for the submission of applications for federal grants and for funding from any other sources for the creation or operation of volunteer projects. The director shall ensure accountability for all resources received.

(6) The director, together with the commission, shall integrate and develop state plans for all services provided under this part, including but not limited to the office of public instruction's service learning program, the Montana university system innovative projects, ~~the Montana conservation corps established in 23-1-301~~, the department of military affairs' service involvement, and other community and volunteer service programs."

**Section 2. Repealer.** Sections 23-1-301, 23-1-302, 23-1-303, 23-1-311, 23-1-312, 23-1-313, and 23-1-314, MCA, are repealed.

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

Approved March 30, 2007

## CHAPTER NO. 86

[HB 58]

AN ACT INCREASING THE MAXIMUM UNEMPLOYMENT WEEKLY BENEFIT AMOUNT AND INCREASING THE MINIMUM UNEMPLOYMENT WEEKLY BENEFIT IF THE UNEMPLOYMENT INSURANCE CONTRIBUTIONS SCHEDULE IS SCHEDULE I; PROVIDING THAT AN INDIVIDUAL IS NOT DISQUALIFIED FROM RECEIVING UNEMPLOYMENT BENEFITS IF THE INDIVIDUAL LEAVES EMPLOYMENT AS A RESULT OF THE MANDATORY MILITARY TRANSFER OF THE INDIVIDUAL'S SPOUSE; AND AMENDING SECTIONS 39-51-2201 AND 39-51-2302, MCA.

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

**Section 1.** Section 39-51-2201, MCA, is amended to read:

**“39-51-2201. Weekly benefit amount — determination of average weekly wage.** (1) An individual’s weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. ~~The maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. The maximum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.~~

~~(3) The minimum weekly benefit amount must be 19% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.~~

~~(3) The maximum and minimum weekly benefit amounts are computed in the following manner:~~

~~(a) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule II or higher, the maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.~~

~~(ii) The minimum weekly benefit amount must be 19% of the average weekly wage.~~

~~(iii) The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.~~

~~(b) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule I, the maximum weekly benefit amount is 67.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.~~

~~(ii) The minimum weekly benefit amount must be 20% of the average weekly wage.~~

~~(iii) The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.”~~

**Section 2.** Section 39-51-2302, MCA, is amended to read:

**“39-51-2302. Disqualification for leaving work without good cause.**

(1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual’s employment.

(2) The individual may not be disqualified *for any of the following reasons if the individual leaves:*

(a) *The individual leaves* employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;

(b) *The individual leaves* temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons; or

(c) *The individual leaves* employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(d) *The individual leaves employment because of the mandatory military transfer of the individual's spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the employer's account.*

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Approved March 30, 2007

## CHAPTER NO. 87

[HB 67]

AN ACT AMENDING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY STATUTES REGARDING A POLL OF THE LEGISLATURE CONCERNING ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, 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 2-4-306, MCA, is amended to read:

**"2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule *if the rule is adopted by the agency*.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the *proposed* rule is adopted, the *proposed* rule or portion of the *proposed* rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the *proposed* rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

**Section 2.** Section 2-4-403, MCA, is amended to read:

**"2-4-403. Legislative intent — poll.** (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) ~~Should~~ *If* 20 or more legislators object to ~~any~~ *a proposed* rule, the committee shall poll the members of the legislature.

(3) The poll ~~shall~~ *must* include an opportunity for the agency to present a written justification for the *proposed* rule to the members of the legislature."

**Section 3.** Section 2-4-404, MCA, is amended to read:

**“2-4-404. Evidentiary value of legislative poll.** ~~In the event that~~ *If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the proposed rule or the validity of the adopted rule if the rule was adopted by the agency.* ~~In the event that~~ *If the poll determines that a majority of the members of both houses find that the proposed rule or adopted rule is contrary to the intent of the legislature, the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.”*

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

**Section 5. Applicability.** [This act] applies to a rule proposed for adoption after [the effective date of this act] or a rule proposed for adoption before but adopted after [the effective date of this act].

Approved March 30, 2007

## CHAPTER NO. 88

[HB 70]

AN ACT REVISING REQUIREMENTS RELATING TO THE PREPARATION OF MODEL ADMINISTRATIVE RULES AND THE PUBLICATION AND DISTRIBUTION OF ADMINISTRATIVE RULES; AND AMENDING SECTIONS 2-4-202, 2-4-302, 2-4-312, AND 2-4-313, MCA.

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

**Section 1.** Section 2-4-202, MCA, is amended to read:

**“2-4-202. Model rules.** (1) ~~The attorney general~~ *secretary of state* shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide *for the rulemaking process and in fulfilling the requirements of 2-4-201. The attorney general shall prepare model rules of practice for agencies to use as a guide for contested case hearings and declaratory rulings.* The *secretary of state and attorney general* shall add to, amend, or revise the model rules from time to time as ~~he considers~~ necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions ~~thereto shall~~ *must* be appropriate for the use of as many agencies as is practicable and ~~shall~~ *must* be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter.”

**Section 2.** Section 2-4-302, MCA, is amended to read:

**“2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a

monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

- (a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and
- (b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and ~~mailed~~ *sent* within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and ~~mailed~~ *sent* at least 30 days in advance of the agency's intended action. In addition to publishing and ~~mailing~~ *sending* the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the

proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, *e-mail address*, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

**Section 3.** Section 2-4-312, MCA, is amended to read:

**"2-4-312. Publication and arrangement of register.** (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405. *The register must be sent in electronic format unless a hard copy is requested.*

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM."

**Section 4.** Section 2-4-313, MCA, is amended to read:

**“2-4-313. Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following *in an electronic format unless a hard copy is requested*:

- (a) attorney general, one copy;
- (b) clerk of United States district court for the district of Montana, one copy;
- (c) clerk of United States court of appeals for the ninth circuit, one copy;
- (d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;
- (e) state law library, one copy;
- (f) state historical society, one copy;
- (g) each unit of the Montana university system, one copy;
- (h) law library of the university of Montana-Missoula, one copy;
- (i) legislative services division, two copies;
- (j) library of congress, one copy;
- (k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection (5). Fees are not refundable.

(4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(5) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405.”

Approved March 30, 2007

## CHAPTER NO. 89

[HB 75]

AN ACT STATUTORILY APPROPRIATING BENTONITE TAXES FOR DISTRIBUTION AS PROVIDED BY LAW; PROVIDING FOR A REMITTANCE AND DISTRIBUTION OF TAXES ON BENTONITE PRODUCTION OCCURRING BEFORE JANUARY 1, 2007; AMENDING SECTIONS 15-39-110 AND 17-7-502, 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 15-39-110, MCA, is amended to read:

**“15-39-110. Distribution of taxes.** (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through ~~(12)~~ (11).

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection ~~(13)~~ (12).

(2) ~~For the production of bentonite occurring after December 31, 2004, and before January 1, 2006, The percentage of the tax determined under subsection (1)(a) and specified in subsections (3) through (11) is allocated according to the following schedule:~~

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 20-9-331, 20-9-333, 20-9-360, and 20-25-423; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 20-9-331, 20-9-333, 20-9-360, and 20-25-423.

~~(3) For the production of bentonite occurring after December 31, 2005, and before January 1, 2007, 90% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 10% must be distributed as provided in subsection (13).~~

~~(4)(3) For the production of bentonite occurring after December 31, 2006, and before January 1, 2008, 80% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 20% must be distributed as provided in subsection (13) (12).~~

~~(5)(4) For the production of bentonite occurring after December 31, 2007, and before January 1, 2009, 70% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 30% must be distributed as provided in subsection (13) (12).~~

~~(6)(5) For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection (13) (12).~~

~~(7)(6) For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection (13) (12).~~

~~(8)~~(7) For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection ~~(13)~~ (12).

~~(9)~~(8) For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection ~~(13)~~ (12).

~~(10)~~(9) For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection ~~(13)~~ (12).

~~(11)~~(10) For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection ~~(13)~~ (12).

~~(12)~~(11) For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection ~~(13)~~ (12).

~~(13)~~(12) For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through ~~(12)~~ (11) are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-107, 20-9-331, 20-9-333, 20-9-360, and 20-25-423.

~~(14)~~(13) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

~~(15)~~(14) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value for county classification purposes under 7-1-2111 and for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection ~~(15)~~(a) (14)(a) must be treated as assessed value under 15-8-111 for

the purposes of local government debt limits and other bonding provisions as provided by law.

*(15) The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section.*

**Section 2.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; *15-39-110*; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 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; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 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; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)”

**Section 3. Transition remittance.** The department of revenue is authorized to remit a county's share of taxes collected on the production of

bentonite occurring after June 30, 2006, and before January 1, 2007. The department shall remit the taxes for that period as if the statutory appropriation under 17-7-502 were in effect for that period. The distribution of taxes for that period must be made under 15-39-110, as that section read on December 31, 2006.

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

**Section 5. Retroactive applicability.** [Section 3] applies retroactively, within the meaning of 1-2-109, to bentonite produced after June 30, 2006, and before January 1, 2007.

Approved March 30, 2007

## CHAPTER NO. 90

[HB 81]

AN ACT GENERALLY REVISING TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING THAT PARAPROFESSIONALS MUST BE MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; REQUIRING ELECTED COUNTY SUPERINTENDENTS TO FILE A MEMBERSHIP ELECTION FORM UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THAT MEMBERS CANNOT CONCURRENTLY PARTICIPATE IN BOTH THE TEACHERS' RETIREMENT SYSTEM AND THE OPTIONAL RETIREMENT SYSTEM; REVISING THE REQUIREMENTS OF FAMILY LAW ORDERS TO PROVIDE FOR THE PAYMENT OF BENEFITS FOR THE LIFE OF THE ALTERNATE PAYEE; CLARIFYING THAT ONLY ACTIVE MEMBERS OR INACTIVE VESTED MEMBERS MAY PURCHASE SERVICE CREDIT; REQUIRING THAT ACCOUNTS REINSTATED FROM DORMANT STATUS INCLUDE INTEREST; PROVIDING FOR THE PAYMENT OF INTEREST ON CORRECTED ERRORS; CLARIFYING THE DATE OF TERMINATION FOR THE PURPOSE OF TERMINATION PAY; CLARIFYING THAT LUMP-SUM AMOUNTS DUE AN ESTATE MAY BE PAID TO THE PERSONAL REPRESENTATIVE OR EXECUTOR; REQUIRING EMPLOYERS TO USE THE SYSTEM'S ONLINE REPORTING SYSTEM FOR AUTHORIZING VOLUNTARY INSURANCE PREMIUM DEDUCTIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-202, 19-20-302, 19-20-305, 19-20-414, 19-20-427, 19-20-501, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-705, 19-20-716, 19-20-717, 19-20-731, 19-20-805, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 19-20-101, MCA, is amended to read:

**“19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accumulated contributions” means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member’s individual account in the annuity savings ~~fund~~ *account*, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) “Actuarial equivalent” means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" has the meaning provided in 15-30-101.

(10) "Member" means a person who has an individual account in the annuity savings fund account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any,

payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

**Section 2.** Section 19-20-104, MCA, is amended to read:

**"19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation ~~fund~~ *account*, and the maintenance of accumulated contributions in the annuity savings ~~fund~~ *account*, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana."

**Section 3.** Section 19-20-202, MCA, is amended to read:

**"19-20-202. Per diem and expenses of board members.** The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive \$50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of ~~such~~ *the* board or in the execution of ~~his~~ *his* duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section ~~shall~~ *must* be paid from the expense ~~fund~~ *account* of the retirement system."

**Section 4.** Section 19-20-302, MCA, is amended to read:

**"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, *paraprofessional who provides instructional support*, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and

(f) a person elected to the office of county superintendent of schools.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and ~~may shall~~, within 30 days of taking office, ~~elect~~ *file an irrevocable written election* to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

~~(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.~~

~~(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.~~



(e)(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f)(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) *An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.*

(b) *An employee of the Montana university system who is a participant in the optional retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(f) is ineligible to be an active member of this system.*

**Section 5.** Section 19-20-305, MCA, is amended to read:

**"19-20-305. Alternate payees — family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) *"alternate payee" means the former spouse of the member or retiree, who is entitled to an actuarially equivalent portion or a fixed amount of the member's or retiree's retirement benefit;*

(a) ~~"participant" means a member, retiree, or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant to this chapter; and~~

(b) *"family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and*

(c) *"participant" means a member or retiree of the retirement system.*

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's

rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) ~~Service~~ *The service, disability, or survivor* retirement benefit payments or withdrawals of member contributions may be apportioned *to an alternate payee* by directing payment of:

(i) a percentage of the ~~an~~ *actuarially equivalent* amount payable; or

(ii) payment of a fixed amount of no more than the amount payable to the participant. *A fixed amount must be payable for a determinate period of time not greater than the life of the participant.*

~~(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.~~

~~(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.~~

~~(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.~~

~~(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.~~

*(b) (i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant.*

*(ii) The amount payable must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.*

*(c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i).*

*(6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee.*

(7) *If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as determined by the formula in subsection (5)(b)(i).*

(8) *Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned in the same manner as determined under subsection (5)(b)(i).*

(9) *Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:*

(a) *the date the participant begins receiving benefits; or*

(b) *the first day of the month following receipt of a certified family law order.*

~~(6)~~(10) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

~~(7)~~(11) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

*(12) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section."*

**Section 6.** Section 19-20-414, MCA, is amended to read:

**"19-20-414. Payment methods for purchase of service credit.** (1) *A An active or vested member who is eligible to purchase service under this chapter may at any time before retirement apply to purchase the service credit by making payment as provided in this section.*

(2) Subject to subsection (3), service credit may be purchased by one or a combination of the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred or rolled over to the retirement system pursuant to subsection (2) may not exceed the amount due to purchase the service.

(b) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(4) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by this section, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits."

**Section 7.** Section 19-20-427, MCA, is amended to read:

**"19-20-427. Redeposit of contributions previously withdrawn.** In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest in the amount that the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415."

**Section 8.** Section 19-20-501, MCA, is amended to read:

**"19-20-501. Financial administration of money.** The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. The rate established by the board may not be less than 4%.

(3) ~~The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest.~~ In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

**Section 9.** Section 19-20-503, MCA, is amended to read:

**“19-20-503. Transfer of dormant or unclaimed accounts.** (1) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation ~~fund~~ *account* if the *annuity savings* account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, *including the interest the amount would have earned had the amount remained in the annuity savings account*, must be transferred back to the member’s annuity savings account upon the member’s request.

(2) Retirement benefits must be claimed within 5 years of the date of the member’s death. If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member’s account balance reverts to the pension trust fund.”

**Section 10.** Section 19-20-602, MCA, is amended to read:

**“19-20-602. Annuity savings ~~fund~~ *account* — member’s contribution.**

(1) The annuity savings ~~fund~~ *account* is a ~~fund~~ *an account* in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the member’s earned compensation.

(2) Contributions to and payments from the annuity savings ~~fund~~ *account* must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) 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. These contributions must become part of the member’s accumulated contributions but must be accounted for separately from those previously accumulated.

(c) 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 earned compensation as defined in 19-20-101. 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 retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings ~~fund~~ *account*. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings ~~fund~~ *account* to the pension accumulation ~~fund~~ *account*."

**Section 11.** Section 19-20-603, MCA, is amended to read:

**"19-20-603. Withdrawal of accumulated contributions — options.** An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings ~~fund~~ *account* in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

**Section 12.** Section 19-20-605, MCA, is amended to read:

**"19-20-605. Pension accumulation ~~fund~~ *account* — employer's contribution.** The pension accumulation ~~fund~~ *account* is the ~~fund~~ *account* in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation ~~fund~~ *account* must be made as follows:

(1) Each employer shall pay into the pension accumulation ~~fund~~ *account* an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation fund account, and the amount required to allow regular interest on the annuity savings fund account must be transferred to that fund account from the pension accumulation fund account.

(6) The retirement board may transfer from the pension accumulation fund account to the expense fund account an amount necessary to cover expenses of administration."

**Section 13.** Section 19-20-705, MCA, is amended to read:

**"19-20-705. Correction of errors.** (1) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).

(4) *Interest accrues on contributions not reported or amounts overpaid to members at the actuarially assumed rate. Interest accrues from the date the contributions were due or the date the benefits were paid in error. If the board finds that the error was caused by the teachers' retirement system, interest must be waived.*"

**Section 14.** Section 19-20-716, MCA, is amended to read:

**"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) (5) and (5) (6), by signing a binding, irrevocable written election

at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) *For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter.*

~~(3)~~(4) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections ~~(4)~~ (5) and ~~(5)~~ (6).



(4)(5) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5)(6) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

**Section 15.** Section 19-20-717, MCA, is amended to read:

**"19-20-717. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the payment recipient. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the ~~guardians~~ *personal representative or executor* of the survivor's estate, ~~share and share alike.~~

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

**Section 16.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits.** (1) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

- (a) one-third of the sum of the member's average final compensation; or
- (b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit ~~is based on~~ *must include* the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

(6) *For purposes of this section, "position eligible to participate in 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.*

(7) *The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."*

**Section 17.** Section 19-20-805, MCA, is amended to read:

**“19-20-805. Earned compensation — part-time service.** (1) The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years immediately preceding the member’s termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member’s part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member’s account.

(2) (a) Subject to subsection (2)(b), if a member has transferred service from the public employees’ retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers’ retirement system, the member’s average final compensation may be calculated as follows:

(i) if the member’s part-time service credit in the public employees’ retirement system plus the member’s part-time service credit in the teachers’ retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member’s annual salary for that fiscal year must be the member’s salary as a member of the public employees’ retirement system plus the member’s salary as a member of the teachers’ retirement system; or

(ii) if the member’s part-time service credit in the public employees’ retirement system plus the member’s part-time service credit in the teachers’ retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member’s part-time salary as a member of the public employees’ retirement system plus the member’s part-time salary as a member of the teachers’ retirement system must be divided by the sum of the member’s part-time teachers’ retirement system service credit and the member’s part-time public employees’ retirement system service credit, ~~divided by the member’s part-time teachers’ retirement system service credit.~~

(b) Compensation reported to the public employees’ retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.”

**Section 18.** Section 19-20-1101, MCA, is amended to read:

**“19-20-1101. Withholding of group insurance premium from retirement allowance.** (1) A retired member who is a participant in an *approved* employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member’s retirement allowance by the retirement system. ~~and Premiums withheld may be paid~~ paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer’s insurance carrier.

(3) *Each month, using the retirement system’s online employer reporting system, the employer shall verify that all authorized insurance deductions are correct and notify the retired member of any changes.*”

**Section 19. Effective date.** [This act] is effective on passage and approval.

Approved March 30, 2007

## CHAPTER NO. 91

[HB 86]

AN ACT GENERALLY REVISING THE LEGISLATIVE AUDIT ACT TO REFLECT CURRENT PROFESSIONAL STANDARDS AND AUDITING PRACTICES; PROVIDING FOR REPORTING OF APPARENT VIOLATIONS OF THE STATE CODE OF ETHICS TO THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR AUDIT SELECTION BASED ON RISK; REQUESTING THE GOVERNOR, BOARD OF REGENTS, AND JUDICIARY TO FURNISH RECOMMENDATIONS FOR AUDITS; PROVIDING EMPLOYMENT PROTECTION TO EMPLOYEES WHO PROVIDE INFORMATION TO THE LEGISLATIVE AUDIT COMMITTEE; AND AMENDING SECTIONS 5-13-101, 5-13-304, 5-13-308, 5-13-309, AND 5-13-321, MCA.

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

**Section 1.** Section 5-13-101, MCA, is amended to read:

**“5-13-101. Title and purpose of chapter.** (1) This chapter may be cited as “The Legislative Audit Act”.

(2) Because the legislature is responsible for authorizing the expenditure of public moneys *money*, designating the sources from which moneys *money* may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of ~~fi~~ *seal books*, accounts, *activities*, and records so that it may be assured that its directives have been ~~faith~~ *fully* carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing the legislature with factual information vital to the discharge of its legislative duties.”

**Section 2.** Section 5-13-304, MCA, is amended to read:

**“5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a ~~special~~ *an audit to meet the standards and accomplish the objectives required in 5-13-308* whenever the legislative auditor determines it necessary and shall ~~so~~ advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) *report immediately to the commissioner of political practices any instances of apparent violations of the state code of ethics provided for in Title 2, chapter 2, part 1;*

(6)(7) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7)(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection.”

**Section 3.** Section 5-13-308, MCA, is amended to read:

**“5-13-308. Audit standards and objectives.** The objectives of *financial compliance, performance, and information system* audits of state agencies or *their programs* conducted by the legislative auditor are *formulated, defined, and conducted in accordance with industry standards established for auditing* to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently, ~~and~~ effectively, *and in accordance with legislative intent*;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets, *including information technology*, of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency’s operations.”

**Section 4.** Section 5-13-309, MCA, is amended to read:

**“5-13-309. Information from state agencies.** (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, *activities*, and records.

(2) The legislative auditor may examine at any time the books, accounts, *activities*, and records, confidential or otherwise, of a state agency. This ~~shall~~ *section may* not be construed as authorizing the publication of information ~~which the prohibited by law prohibits publishing~~.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state ~~moneys~~ *money* or property under ~~his~~ *that agency’s* control or for which ~~he~~ *the agency* is responsible.”

**Section 5.** Section 5-13-321, MCA, is amended to read:

**“5-13-321. Joint audits of ~~medicaid program~~.** (1) The legislative auditor ~~shall may~~ participate with the United States department of health and human services office of the inspector general in a program of joint audits of the Montana ~~medicaid program~~ authorized by Title 53, chapter 6 *audit oversight organizations on joint audits of Montana programs or services*. For the purpose

of the joint audits, the legislative auditor may cooperate with the ~~inspector general~~ *audit oversight organizations*, accept and provide information necessary to the success of the joint audits, and enter into contracts for the performance of the joint audits. Audits authorized by this section may examine all or any part of the financing or performance of ~~the medicaid a~~ program, whether operated directly by ~~the department of public health and human services, by another a~~ state agency, or by a contractor with a state agency. Joint audits are subject to the audit standards, objectives, and reporting procedures required by state law and as required in applicable federal laws, regulations, and policies.

(2) Audit costs of the legislative auditor for conducting joint audits authorized by subsection (1) are considered direct costs of the state agency or program subject to the audit. Funds for the payment of the expenses of the legislative auditor must be deposited in the state special revenue fund as provided in 5-13-403. To the maximum extent allowable under federal regulations, the legislative auditor shall charge audit costs of joint audits to federal funds.

(3) Audits conducted pursuant to this section must be approved by the committee as part of the operational plan of the legislative auditor.”

**Section 6. Audit selection based on risk.** (1) In selecting and prioritizing the agencies or programs for audit under 5-13-304, the legislative auditor shall consider the agency’s or program’s financial, operational, and technological risks associated with meeting its intended purpose, goals, objectives, and legal mandates.

(2) To aid in identifying agencies and programs for audit, the committee shall, before July 1 of each odd-numbered year, request that the governor, the board of regents, and the judiciary furnish the committee with a list of any recommendations for agencies and programs within the governor’s, board of regents’, or judiciary’s respective jurisdiction to be considered for audit during the next biennium pursuant to this chapter. The list may be prioritized and must set forth the reasons for recommending each agency or program to be considered based on the risk criteria in subsection (1).

(3) The legislative auditor shall review the lists, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and consult with the committee as necessary.

**Section 7. Employment protection.** An employee of the state of Montana or an authorized contractor who provides information to the committee, the legislative auditor, or the legislative auditor’s authorized designee may not be subject to any penalties, sanctions, retaliation, or restrictions in connection with the employee’s or contractor’s employment as a result of the disclosure of information unless the employee or contractor disclosing the information has violated state law.

**Section 8. Codification instruction.** [Sections 6 and 7] are intended to be codified as an integral part of Title 5, chapter 13, part 3, and the provisions of Title 5, chapter 13, part 3, apply to [sections 6 and 7].

Approved March 30, 2007

## CHAPTER NO. 92

[HB 87]

AN ACT PROVIDING FOR WATER COMMISSIONER DISTRIBUTION OF WATER BASED ON A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTIONS 85-5-101, 85-5-201, AND 85-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 85-5-101, MCA, is amended to read:

**“85-5-101. Appointment of water commissioners.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of the judge’s discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, ~~and~~ permits, *and changes in appropriation right* issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers’ compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees, ~~and~~ certificate holders, *and holders of a change in appropriation right*, to pay their proportionate share of fees and compensation, including the cost of workers’ compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner."

**Section 2.** Section 85-5-201, MCA, is amended to read:

**"85-5-201. Distribution of water and related expenses.** ~~Every~~ *Each* water commissioner appointed by the judge of the district court for ~~that the~~ purpose of *distributing water shall have* has the authority to admeasure and distribute to the parties interested, under ~~such a~~ decree, permit, or certificate, *or change in appropriation right*, the water to which those who are parties to the decree or holders of a permit, or certificate, *or change in appropriation right*, or privy ~~thereto~~ to a permit, certificate, or change in appropriation right, are entitled, according to their priority as established by the decree, permit, or certificate, *or change in appropriation right*. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters. ~~Such expense shall~~ *Expenses associated with making headgates or dams for the distribution of water must* be assessed against and paid by the party or parties for whom *the ditch or ditches were repaired or the dams or headgates were made. such services in the repair of the ditch or ditches and the making of any dams or headgates were necessary.* In the discretion of the court, ~~such~~ *the* costs or expenses may be assessed against the land upon which or for the benefit of which ~~such the~~ expense had been incurred."

**Section 3.** Section 85-5-301, MCA, is amended to read:

**"85-5-301. Complaint by dissatisfied user.** (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than ~~he~~ *the person* is receiving or to a right prior to that allowed ~~him~~ *the person* by the water commissioner or water commissioners may file ~~his~~ *a* written complaint, duly verified, setting forth the facts of the claim. ~~Thereupon~~

(2) *Upon receipt of the complaint*, the judge shall fix a time for the hearing of ~~such the~~ petition and shall direct that ~~such~~ notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for



the hearing, the judge ~~must~~ *shall* hear and examine the complainant and other parties ~~as may~~ *who* appear to support or resist ~~such~~ *the* claim and examine the water commissioner or water commissioners and witnesses ~~as to~~ *regarding* the charges contained in the complaint.

(2)(3) Upon the determination of the hearing, the judge shall make ~~such~~ findings and *issue an order as he that the judge* considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, *a permit, a certificate, or a change in appropriation right*, the judge shall give the proper instructions for ~~such~~ distribution of the water.

(4) The judge may remove any water commissioner and appoint ~~some other~~ person ~~in his stead if he~~ *a new water commissioner if the judge* considers determines that the interests of the parties in the waters mentioned in the decree, *a permit, a certificate, or a change in appropriation right* will be best ~~suberved thereby~~ *served by appointing a new water commissioner.*, ~~and if~~ If it appears to the judge that the water commissioner has willfully failed to perform ~~his~~ *the water commissioner's* duties, ~~he~~ *the water commissioner* may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make ~~such~~ *an order as to* regarding the payment of costs of the hearing ~~as appears to him to be~~ *that the judge determines is* just and proper."

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

Approved March 30, 2007

## CHAPTER NO. 93

[HB 102]

AN ACT REVISING SPECIAL PURPOSE DISTRICT LAWS; MODIFYING THE PROTEST PROVISIONS FOR CITY PROPERTIES INCLUDED IN A PROPOSED RURAL SPECIAL IMPROVEMENT DISTRICT; MODIFYING THE PROTEST PROVISIONS FOR PROPERTIES OUTSIDE A CITY THAT ARE INCLUDED IN A PROPOSED SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE NOTICE REQUIREMENTS FOR A RESOLUTION OF INTENTION TO CREATE A SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE PROTEST AGAINST PROPOSED WORK OR AGAINST THE EXTENT OR CREATION OF A SPECIAL IMPROVEMENT DISTRICT; MODIFYING A CITY COUNCIL'S AUTHORITY TO ORDER IMPROVEMENTS; MODIFYING VOTER QUALIFICATIONS TO VOTE ON THE CREATION OF A COUNTY WATER OR SEWER DISTRICT; ELIMINATING THE PROPERTY TAX LIMITATIONS FOR IRRIGATION DISTRICT BONDING; PROHIBITING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT OR BOARD OF COUNTY COMMISSIONERS ON BEHALF OF AN IRRIGATION DISTRICT FROM LEVYING PROPERTY TAXES AS PROVIDED IN TITLE 15, CHAPTER 6, FOR IRRIGATION DISTRICT PURPOSES; AMENDING SECTIONS 7-12-2102, 7-12-4102, 7-12-4106, 7-12-4110, 7-12-4114, 7-13-2212, 7-13-2328, 85-7-206, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, AND 85-7-2136, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-12-2102, MCA, is amended to read:

**“7-12-2102. Authorization to create rural improvement districts — property owners may petition for creation.** (1) Whenever the public interest or convenience may require, the board of county commissioners may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) The board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. ~~Property owners~~ *Properties* within the proposed district boundaries inside the city may not be included in the rural special improvement district if ~~40% of those property owners, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels in the city representing not less than 40% of the total projected assessments against properties in the city~~ protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.”

**Section 2.** Section 7-12-4102, MCA, is amended to read:

**“7-12-4102. Authorization for creation of special improvement districts — petition for creation.** (1) The city or town council may:

- (a) create special improvement districts, designating them by number;
- (b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;
- (c) make the assessments payable in installments; and
- (d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

- (a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;
- (b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;
- (c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city;

- (i) graded or regraded to the official grade;
  - (ii) planked or replanked;
  - (iii) paved or repaved;
  - (iv) macadamized or remacadamized;
  - (v) graveled or regraveled;
  - (vi) piled or repiled;
  - (vii) capped or recapped;
  - (viii) surfaced or resurfaced;
  - (ix) oiled or reoiled;
- (d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:
- (i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);
  - (ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;
  - (iii) waterworks, water mains, and extensions of water mains;
  - (iv) pipes, hydrants, and hose connections for irrigating purposes;
  - (v) appliances for fire protection;
  - (vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;
  - (vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;
- (e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:
- (i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;
  - (ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;
  - (iii) breakwaters, levees, retaining walls, and bulkheads; and
  - (iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;
  - (f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;
  - (g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

*(3) The city governing body may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.*

~~(3)(4)~~ The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. ~~Property owners~~ *Properties* within the proposed district boundaries outside the city may not be included in the special improvement district if ~~40% of those property owners~~, *under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels outside the city representing not less than 40% of the total projected assessments against properties outside the city* protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions.”

**Section 3.** Section 7-12-4106, MCA, is amended to read:

**“7-12-4106. Notice of passage of resolution of intention — exception.**

(1) ~~Upon~~ *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.

(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 4.** Section 7-12-4110, MCA, is amended to read:

**"7-12-4110. Protest against proposed work or district.** (1) (a) Except as provided in ~~subsection~~ *subsections* (1)(b) and (2), at any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

*(2) The provisions of subsection (1) do not apply to a district created under 7-12-4114 as a result of a petition submitted as provided in 7-12-4102(3).*

~~(2)(3)~~ A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within the protest period. The clerk shall endorse on the protest document the date and hour of its receipt by the clerk.

~~(3)(4)~~ (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

**Section 5.** Section 7-12-4114, MCA, is amended to read:

**"7-12-4114. Resolution creating special improvement district.** (1) The council may order proposed improvements after:

(a) no protests have been delivered to the clerk of the city council within the time prescribed in 7-12-4110 after the date of the first publication of the notice of the passing of the resolution of intention;

(b) a protest has been found to be insufficient or has been overruled; or

(c) a protest against the extent of the proposed district has been heard and denied; or

*(d) a resolution creating the district following receipt of a petition as provided in 7-12-4102(3) has been passed.*

(2) Before ordering any of the proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention introduced and passed by the council."

**Section 6.** Section 7-13-2212, MCA, is amended to read:

**“7-13-2212. Qualifications to vote on question of creating district.** (1) Except as provided in subsection (2), an individual is not entitled to vote at any election under the provisions of part 23 and this part unless the individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which the individual proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of the real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that the elector is qualified if registered to vote in any state of the United States and files proof of registration with the election administrator at least 20 40 days prior to the election in which the individual intends to vote.”

**Section 7.** Section 7-13-2328, MCA, is amended to read:

**“7-13-2328. Sufficient vote required to issue bonds.** (1) (a) When the board of directors canvasses the vote of a bond election, ~~it~~ *the board* shall determine the approval or rejection of the bond proposition as provided in subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:

(i) determine the total number of electors of the district who were qualified to vote at the bond election;

(ii) determine the total number of qualified electors who voted at the bond election;

(iii) calculate the percentage of qualified electors voting at the 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 40% or more, the bond proposition is approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.

(c) When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition; otherwise it must be rejected.

(d) When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.

(2) *For purposes of this section, the total number of electors of the district who are qualified to vote at the bond election equals the sum of:*

(a) *the individuals who possess all the qualifications required of electors under the general election laws of the state and who are residents of the district; and*

(b) *the individuals who have satisfied the requirements of 7-13-2212(2) with respect to the particular bond election.*

(2)(3) If the canvass of the vote establishes the approval and adoption of the bond proposition, then the board of directors may by resolution provide for the form and execution of the bonds and for the issuance of the bonds.”

**Section 8.** Section 85-7-206, MCA, is amended to read:

**“85-7-206. Basis and apportionment of annual tax.** ~~Subject to 15-10-420, the~~ *The annual tax levy and the apportionment and distribution of*

the total amount required to be raised in any year must be determined and imposed in accordance with 85-7-2104 and the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter.”

**Section 9.** Section 85-7-1953, MCA, is amended to read:

**“85-7-1953. Amount owed United States — lien and special tax.** All amounts to be paid to the United States under any contract made pursuant to this part between the district and the United States are a general obligation of the district, and the amounts to be paid to the United States are a lien upon the irrigation system of the district. ~~Subject to 15-10-420, all~~ All lands within the district or added to the district must be subject to a special tax or assessment authorized under 85-7-2104 for the payment of all amounts to be paid to the United States under the contract between the district and the United States. The special tax or assessment constitutes a first and prior lien on the land against which the tax or assessment is levied to the same extent and with like force and effect as taxes levied for state and county purposes.”

**Section 10.** Section 85-7-1973, MCA, is amended to read:

**“85-7-1973. Amount owed state — lien and special tax.** All amounts owed to the state under any contract made under 85-7-1971 through 85-7-1975 between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. ~~Subject to 15-10-420, all~~ All lands now within the district or added to the district are subject to a special tax or assessment under 85-7-2104 for the payment of all amounts owed to the state under the contract between the district and the state of Montana. The special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes.”

**Section 11.** Section 85-7-2104, MCA, is amended to read:

**“85-7-2104. Annual tax levy — apportionment when tracts divided.**

(1) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) ~~Subject to 15-10-420, the~~ The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the district, that portion of the respective total amounts to be raised that the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) ~~In the event that~~ If the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than \$5.

(4) *The board of commissioners of an irrigation district or the board of county commissioners on behalf of a district may not levy property taxes as provided in Title 15, chapter 6, for district administration, operations, debt service, or any other district purpose.*"

**Section 12.** Section 85-7-2117, MCA, is amended to read:

**"85-7-2117. Conclusiveness of tax or assessment.** In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake and subject to 15-10-420, are conclusive and final, except as otherwise provided in this part."

**Section 13.** Section 85-7-2134, MCA, is amended to read:

**"85-7-2134. Levy of taxes and assessments by county commissioners.** If for any reason a levy of taxes or assessments *under 85-7-2104* is not made for any irrigation district in any year by the board of commissioners of the district within the time provided by 85-7-2104, the board of county commissioners of the county in which the district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of the district. ~~Subject to 15-10-420, the~~ *The* board of county commissioners shall make the levy *pursuant to 85-7-2104* that should have been made by the board of commissioners of the district and shall furnish the county clerk with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136. The levy has the same force and effect as though made by the board of commissioners of the district. This section applies only to irrigation districts having a bonded



indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users.”

**Section 14.** Section 85-7-2136, MCA, is amended to read:

**“85-7-2136. Collection of taxes or assessment.** (1) ~~Subject to 15-10-420 and on~~ On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county *subject to taxation or assessment under 85-7-2104* for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid.”

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

Approved March 30, 2007

## CHAPTER NO. 94

[HB 128]

AN ACT ELIMINATING OUTMODED REQUIREMENTS FOR PRIOR REVIEW OR APPROVAL BY THE ATTORNEY GENERAL OF LOCAL GOVERNMENT AND SCHOOL BOND ACTIONS, LAW ENFORCEMENT MUTUAL AID AGREEMENTS, SPECIAL EDUCATION COOPERATIVE CONTRACTS, AND TEXTBOOK SURETY BONDS; AMENDING SECTIONS 7-7-104, 7-7-2213, 7-7-4212, 20-7-454, 20-7-455, 20-7-457, 20-7-604, 20-9-327, 20-9-461, 20-9-464, 20-9-466, 20-15-404, AND 44-11-310, MCA; AND REPEALING SECTIONS 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, AND 44-11-309, MCA.

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

**Section 1.** Section 7-7-104, MCA, is amended to read:

**“7-7-104. Limitation on action to test bond validity.** A local government general obligation bond of any issue, ~~in which the preliminary proceedings have been submitted to and approved by the attorney general,~~ may not be held invalid because of any defect or failure to comply with ~~any~~ a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the local government.”

**Section 2.** Section 7-7-2213, MCA, is amended to read:

**“7-7-2213. Citizen bonds — procedural requirements prior to issuance.** ~~(1) Prior to the final passage of the resolution provided for in 7-7-2238, a county shall notify the attorney general of its intention to issue citizen bonds.~~

~~(2) Prior to issuing citizen bonds, a county shall make available to interested investors:~~

~~(a)(1) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; and~~

~~(b)(2) application forms for the purchase of citizen bonds that must specify at a minimum:~~

~~(i)(a) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;~~

~~(ii)(b) the issue date, maturity dates, and the dates on which interest will be earned and paid;~~

~~(iii)(c) the denominations of the bonds and the maximum amount of the bonds that one buyer may purchase;~~

~~(iv)(d) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and~~

~~(v)(e) the provision made for the transfer of ownership of outstanding bonds; and~~

~~(e) other information that the attorney general may require.”~~

**Section 3.** Section 7-7-4212, MCA, is amended to read:

**“7-7-4212. Citizen bonds — procedural requirements prior to issuance.** (1) ~~Prior to final passage of the resolution provided for in 7-7-4236, a city or town shall notify the attorney general of its intention to issue citizen bonds.~~

(2) Prior to issuing citizen bonds, a city or town shall make available to interested investors:

(a)(1) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; *and*

(b)(2) application forms for the purchase of citizen bonds, which must specify at a minimum:

(i)(a) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(ii)(b) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(iii)(c) the denominations of the bonds and the maximum amount of bonds that any one buyer may purchase;

(iv)(d) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; *and*

(v)(e) the provision made for the transfer of ownership of outstanding bonds; *and*

(e) any other information that the attorney general may require.”

**Section 4.** Section 20-7-454, MCA, is amended to read:

**“20-7-454. Final approval and filing of full service education cooperative contract.** ~~Within 10 days after approval by the attorney general and prior~~ *Prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 must be:*

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; *and*

(3) filed with the secretary of state.”

**Section 5.** Section 20-7-455, MCA, is amended to read:

**“20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract.** A school district entering into a full service education cooperative contract pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract ~~such any~~ *any* material, personnel, or services ~~as may be~~ *that are* within its legal power to furnish.”

**Section 6.** Section 20-7-457, MCA, is amended to read:

**“20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.** (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior

to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of ~~20-7-453 and~~ 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) ~~Before July 1, 1994, the~~ *The* superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

- (a) be limited to a statewide total of no more than 23;
- (b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and
- (c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member."

**Section 7.** Section 20-7-604, MCA, is amended to read:

**"20-7-604. Licensing textbook dealers.** (1) Textbook dealers ~~shall~~ *must* be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction ~~his~~ *the dealer's* written agreement to:

(a) guarantee that textbooks ~~shall~~ *must* be supplied to any district at the listed, uniform sales prices in effect for schools, except that ~~such~~ *the* prices may be reduced in accordance with this section;

(b) guarantee that at no time ~~shall~~ *will* any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond ~~shall~~ *must* run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond ~~shall~~ *must* be set by the superintendent of public instruction and ~~shall be~~ *may*

not be less than \$2,000 but not or more than \$10,000. ~~The bond shall be approved by the attorney general.~~ It shall be is the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.”

**Section 8.** Section 20-9-327, MCA, is amended to read:

**“20-9-327. Quality educator payment.** (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101; and
- (iv) state youth correctional facilities, as defined in 41-5-103.

(b) A special education cooperative that has not met the requirements of ~~20-7-453 and 20-7-454~~ may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(3) The quality educator payment is \$2,000 times the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) *of this section* in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students.”

**Section 9.** Section 20-9-461, MCA, is amended to read:

**“20-9-461. Purpose.** ~~Sections 20-9-461 through Section 20-9-464 and this section~~ are intended to improve the marketability of bonds issued by school districts in order that ~~said~~ *the* bonds may be sold upon the most favorable terms.”

**Section 10.** Section 20-9-464, MCA, is amended to read:

**“20-9-464. Statute of limitations — action to test validity.** A bond of any issue, in which the preliminary proceedings have been submitted to and approved by the attorney general, may not be held invalid because of any defect or failure to comply with ~~any~~ *a* statutory provision relating to the authorization, issuance, or sale of the bonds; unless an action to contest the validity of the

bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the school district.”

**Section 11.** Section 20-9-466, MCA, is amended to read:

**“20-9-466. School district bonds — state loan — qualifications for state loan.** (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund, established in 17-5-703, to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421 through *20-9-446*, *20-9-461*, and 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

(3) The board of public education shall:

(a) maintain a record of the total principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

- (a) the tentative date of sale of the school district's bonds;
- (b) the principal amount of the bonds to be issued;
- (c) the name and addresses of bond counsel and the financial ~~adviser~~ *adviser*; and
- (d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. The loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

~~(8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.~~

~~(9)~~(8) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify ~~the attorney general and~~ the department."

**Section 12.** Section 20-15-404, MCA, is amended to read:

**"20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

- (1) the teachers' retirement provisions of Title 19, chapter 20;

- (2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;
- (3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;
- (4) the adult education provisions of Title 20, chapter 7, part 7;
- (5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;
- (6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, and 20-9-461, through 20-9-464, and 20-9-465;
- (7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;
- (8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;
- (9) the school elections provisions of Title 20, chapter 20;
- (10) the students' rights provisions of 20-25-511 through 20-25-516; and
- (11) the health provisions of 50-1-206."

**Section 13.** Section 44-11-310, MCA, is amended to read:

**"44-11-310. Filing of agreement.** Within 20 days after *the final* approval by the ~~attorney general~~ *governing bodies of all parties to the agreement*, an agreement made pursuant to this part must be filed in the office of:

- (1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and
- (2) the secretary of state."

**Section 14. Repealer.** Sections 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, and 44-11-309, MCA, are repealed.

Approved March 30, 2007

## CHAPTER NO. 95

[HB 132]

AN ACT RELATING TO STATE PUBLICATIONS; MODIFYING THE DEFINITIONS OF "STATE AGENCY" AND "STATE PUBLICATION"; DEFINING "DEPOSITORY LIBRARY"; PROVIDING FOR THE ADMINISTRATION OF THE STATE PUBLICATIONS DEPOSITORY LIBRARY PROGRAM; MODIFYING THE NOTIFICATION AND AVAILABILITY REQUIREMENTS FOR STATE PUBLICATIONS; MAINTAINING PERMANENT PUBLIC ACCESS TO STATE PUBLICATIONS; ADDING THE MONTANA UNIVERSITY SYSTEM TO THE LIST OF PUBLICATION EXEMPTIONS; AMENDING SECTIONS 1-11-301, 22-1-211, 22-1-212, 22-1-213, AND 22-1-218, MCA; AND REPEALING SECTIONS 22-1-214, 22-1-215, 22-1-216, AND 22-1-217, MCA.

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

**Section 1.** Section 1-11-301, MCA, is amended to read:

**"1-11-301. Publication and sale of Montana Code Annotated — free distribution.** (1) The legislative council, with the advice of the code



commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as provided in this section.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public of all Montana Code Annotated material must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary publications must be deposited in the state special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies that are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) One copy of the Montana Code Annotated and supplements, and other subsequent and ancillary publications except annotations, must be provided at no cost to each library designated as a depository library ~~under 22-1-214 as defined in 22-1-211.~~

(b) The state law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection.”

**Section 2.** Section 22-1-211, MCA, is amended to read:

**“22-1-211. Definitions.** As used in this part, the following definitions apply:

~~(1) “Print” includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.~~

(1) *“Depository library” means a library contracted by the state library under 22-1-212(2) to provide the general public access to state publications.*

(2) *“State agency” includes every means any entity established or authorized by law to govern operations of the state, such as a state office, officer, department, division, section, bureau, board, commission, council, and agency of the state and, where applicable, all subdivisions of each.*

(3) (a) *“State publication” includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print or purchased for distribution by the state, the legislature, constitutional officers, any state department, committee, or other state agency supported wholly or in part by state funds. means any information originating in or produced by the authority of a state agency or at the total or partial expense of a state agency that the agency intends to distribute outside the agency, regardless of format or medium, source or copyright, license, or trademark.*

(b) *The term does not include information intended only for distribution to contractors or grantees of the agency, persons within the agency, or members of the public under 2-6-102 or information produced by a state agency that is intended strictly for internal administrative or operational purposes.*

**Section 3.** Section 22-1-212, MCA, is amended to read:

**“22-1-212. ~~Creation Administration of distribution center state publications depository library program — rulemaking.~~** (1) ~~There is hereby created, as a division of the state library and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system. The state library shall administer a state publications depository library program to identify, acquire, catalog, preserve, and provide access to state publications.~~

(2) *The state library may enter into contracts with other libraries to carry out the provisions of the state publications depository library program.*

(3) ~~To this end the~~ *The state library commission shall make such adopt rules necessary to carry out the provisions of this part.”*

**Section 4.** Section 22-1-213, MCA, is amended to read:

**“22-1-213. ~~State agency publications to be deposited in state library — interlibrary loan — sale publications — notification and availability requirements.~~** Every state agency shall deposit upon release at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide interlibrary loan service to those libraries without depository status. *State agencies shall notify the state library of their state publications and shall make available their state publications to the state library as provided by rule. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the The state library shall, if requested by the agency, also reimburse any state agency for additional state publications so required where to be made available when the quantity desired will necessitate additional printing or other unreasonable expense to such the agency.”*

**Section 5. Permanent public access to state publications.** The state library shall routinely notify depository libraries of recently acquired state publications. The state library shall coordinate with state agencies and depository libraries to ensure permanent public access to state publications. The state library shall offer state publications that it removes from its collection to the Montana historical society, which shall determine which state publications must be preserved as provided for in 22-3-203.

**Section 6.** Section 22-1-218, MCA, is amended to read:

**“22-1-218. Exemptions.** (1) This part does not apply to ~~officers of or affect the duties concerning publications distributed by:~~

(1)(a) the state law library *in connection with the collection described under 22-1-501;*

(2)(b) the code commissioner in connection with duties under Title 1, chapter 11, as amended; and

(3)(c) the legislative services division in connection with its duties under 5-11-203, as amended.; *and*

(d) *the Montana university system.*

(2) *The state library may, at its option and without causing the university system to incur expense, collect, catalog, and make available selected publications of units of the Montana university system."*

**Section 7. Repealer.** Sections 22-1-214, 22-1-215, 22-1-216, and 22-1-217, MCA, are repealed.

**Section 8. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 22, chapter 1, part 2, and the provisions of Title 22, chapter 1, part 2, apply to [section 5].

Approved March 30, 2007

## CHAPTER NO. 96

[HB 140]

AN ACT PROVIDING THAT IF A DECLARATION FOR NOMINATION IS FILED ELECTRONICALLY WITH THE SECRETARY OF STATE, THE DECLARATION DOES NOT HAVE TO BE ACKNOWLEDGED; AND AMENDING SECTION 13-10-201, MCA.

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

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

**"13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall 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. ~~The~~ *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) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

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

Approved March 30, 2007

## CHAPTER NO. 97

[HB 144]

AN ACT REVISING THE WASTE MANAGEMENT LAWS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENJOIN THE TRANSPORTATION OF SOLID WASTE IF THERE IS A VIOLATION; REVISING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS UNDER THE INFECTIOUS WASTE MANAGEMENT ACT; MAKING A VIOLATION OF THE INFECTIOUS WASTE MANAGEMENT ACT A MISDEMEANOR; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES GOVERNING THE INSPECTION AND REGULATION OF THE TRANSPORTATION AND MANAGEMENT OF INFECTIOUS WASTE; AND AMENDING SECTIONS 75-10-231, 75-10-1003, 75-10-1004, AND 75-10-1006, MCA.

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

**Section 1.** Section 75-10-231, MCA, is amended to read:

**"75-10-231. Actions.** The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin *the transportation of solid waste* or the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part."

**Section 2.** Section 75-10-1003, MCA, is amended to read:

**"75-10-1003. Definitions.** As used in this part, the following definitions apply:

~~(1) "Department" means the department of environmental quality established in 2-15-3501.~~

(1) *"Disposal" or "dispose" has the meaning provided in 75-10-203.*

~~(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.~~

(2) *"Generate" or "generation" means to produce infectious waste.*

(3) *"Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:*

- (a) virulence, which is the ability of microorganisms to cause disease;
- (b) dose, which is microorganisms in a quantity sufficient to cause infection;
- (c) portal of entry, which is an opening or route of access into a human body; and
- (d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

- (a) cultures and stocks of infectious agents and associated biologicals;
- (b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;
- (c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and
- (d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "*Intermediate point*" means a place where infectious waste is not treated or disposed of.

(6) "*Person*" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

~~(5)(7)~~ (7) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to *broken glass that may be contaminated with blood*, needles, and scalpel blades, ~~and broken glass that may be contaminated with blood.~~

~~(6)(8)~~ (8) "Steam sterilization" means a treatment method for infectious waste using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

~~(7)(9)~~ (9) "Storage" or "store" means ~~the actual or intended containment of wastes on either a temporary basis or a long-term basis to hold for a temporary period.~~

~~(8)(10)~~ (10) "~~Transportation~~" "*Transport*" or "*transportation*" means ~~the movement of~~ *to move* infectious waste *from the point of generation to any intermediate point or to the point of ultimate treatment or disposal.* ~~from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.~~

~~(9)(11)~~ (11) "~~Treatment~~" "*Treat*" or "*treatment*" means ~~the application of~~ *to apply* a method, technique, or process, including incineration, designed to render infectious waste sterile."

**Section 3.** Section 75-10-1004, MCA, is amended to read:

**"75-10-1004. Prohibition.** (1) *Except as provided in subsection (2), a person may not generate, treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this part or rules adopted under the provisions of this part.*

(2) *The prohibition in subsection (1) does not apply to the generation of infectious waste by an individual in reasonable association with the individual's household operations.*"

**Section 4.** Section 75-10-1006, MCA, is amended to read:

**"75-10-1006. Licensing Generation licensing and regulation — rulemaking authority.** (1) *A person that is required to obtain a license from a board or department of the state to operate a health care facility, as defined in 50-5-101, or to engage in a profession or occupation:*

(a) *may not generate infectious waste, store infectious waste at a place where infectious waste is generated, or transport infectious waste from the point of generation to an intermediate point without a license; and*

(b) *shall comply with the rules adopted under this part by the board or department responsible for licensing that person. ~~that licenses a profession, occupation, or health care facility that generates infectious waste shall require each licensee to comply with this part as a condition of licensure.~~*

(2) ~~The~~ A board or department of the state that issues a license to a person that generates infectious waste:

(a) shall adopt rules to implement this part governing the following activities by a licensee:

(i) *generation of infection waste;*

(ii) *storage of infectious waste at a place where infectious waste is generated;*

(iii) *transportation of infectious waste from the place of generation to an intermediate point; and*

(b) may impose and adjust annual fees commensurate with the costs of regulation.

(2) ~~A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by this part that is not already licensed by a board or department under subsection (1) must obtain a permit annually from the department. The department shall adopt rules to implement this part and may establish an annual fee commensurate with the costs of regulation. Fees collected under the provisions of this part must be deposited in the solid waste management account established in 75-10-117."~~

**Section 5. Criminal penalty.** A person who violates this part or a rule adopted pursuant to this part is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

**Section 6. Department rulemaking authority for infectious waste.**

(1) Except as provided in subsection (2), the department shall adopt rules governing the inspection and regulation of the transportation and management of infectious waste as defined in 75-10-1003.

(2) The department may not adopt rules to regulate:

(a) the generation of infectious waste; or

(b) infectious waste storage or transportation that is regulated under 75-10-1006.

**Section 7. Codification instruction.** (1) [Section 5] is intended to be codified as an integral part of Title 75, chapter 10, part 10, and the provisions of Title 75, chapter 10, part 10, apply to [section 5].

(2) [Section 6] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 6].

Approved March 30, 2007

## CHAPTER NO. 98

[HB 145]

AN ACT GENERALLY REVISING BUILDING CODE ENFORCEMENT PROVISIONS FOR COUNTIES, CITIES, AND TOWNS CERTIFIED TO ENFORCE BUILDING CODES; REVISING PROVISIONS GOVERNING INSPECTIONS BY CERTIFIED COUNTIES, CITIES, AND TOWNS OF BUILDINGS OUTSIDE THEIR JURISDICTION; AMENDING SECTION 50-60-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 50-60-106, MCA, is amended to read:

**“50-60-106. Powers and duties of counties, cities, and towns.** (1) ~~The~~ *As allowed by Title 50, chapter 60, part 3, the* examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, ~~heenses,~~ *licenses,* certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town ~~of the~~ *state.* The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, ~~heenses,~~ *licenses,* certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code *enforcement program* are the responsibility of the county.

(2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the state building code or county, city, or town

building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A ~~local building department county, city, or town certified pursuant to 50-60-302~~, by action of ~~an authorized officer~~ *its building official*, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of *subsection (2)(a) and this subsection (2)(d)*, the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and ~~the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building~~ *all work authorized by those permits has been fully approved by the building official having jurisdiction.*

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, ~~licenses,~~ *licenses*, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the ~~municipality or county, city, or town~~ are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may ~~only~~ be used *only* for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction; *and*

(b) prohibit the commencement of construction until a permit has been issued by the ~~local building department~~ *building code enforcement authority having jurisdiction* after a showing of compliance with the requirements of the applicable provisions of the state building code or county, city, or town building code *or other county, city, or town ordinance or resolution that pertains to the proposed construction.*; *and*

(c) ~~enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the county, city, or town under which the county, city, or town will provide reviews, inspections, orders, and~~



~~certificates of occupancy for a fee and under conditions agreed upon by the parties. County, city, or town powers of enforcement may not be exercised.~~

*(4) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following conditions:*

*(a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.*

*(b) The inspections are not done in lieu of inspections by another county, city, or town that has jurisdiction over the buildings to be inspected.*

*(c) (i) The county, city, or town powers of enforcement possessed as a result of building code enforcement certification by the department may not be exercised in conjunction with the requested inspections.*

*(ii) Similar powers of building code enforcement may not be contractually created or required by the requester and the inspecting jurisdiction.*

*(5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative inspections of those buildings prior to annexation as a condition precedent to receiving any public services or utilities."*

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

Approved March 30, 2007

## CHAPTER NO. 99

[HB 149]

AN ACT INCREASING THE AMOUNT OF HOMESTEAD EXEMPT FROM EXECUTION OR FORCED SALE FROM \$100,000 TO \$250,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 70-32-104, MCA, is amended to read:

**"70-32-104. Limitation on value.** (1) A homestead may not exceed ~~\$100,000~~ *\$250,000* in value. In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as it appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant's undivided interest."

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

Approved March 30, 2007

## CHAPTER NO. 100

[HB 176]

AN ACT SUBSTITUTING THE TERM "ETHANOL-BLENDED GASOLINE" FOR "GASOHOL"; AMENDING AND MAKING UNIFORM DEFINITIONS OF AND REFERENCES TO ETHANOL AND RELATED TERMS; REMOVING THE PERCENTAGE OF ETHANOL IN GASOLINE THAT STATE EMPLOYEES ARE REQUESTED TO USE WHEN FUELING STATE VEHICLES; AMENDING SECTIONS 2-17-414, 15-6-135, 15-70-201, 15-70-202, 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-302, AND 75-11-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-17-414, MCA, is amended to read:

**"2-17-414. State vehicles to use ethanol-blended fuel gasoline — definition.** (1) A department, agency, institution, office, board, and commission of the executive, legislative, and judicial branches of state government and a state institution of higher education owning or operating a motor vehicle capable of burning ethanol-blended ~~fuel~~ *gasoline* shall take all reasonable steps to ensure that the operators of those vehicles use ethanol-blended ~~fuel~~ *gasoline* in the vehicles if ethanol-blended ~~fuel~~ *gasoline* is commercially available within the operating area of the vehicle and is priced competitively with the ~~motor vehicle fuel~~ *gasoline* otherwise used by the vehicle.

(2) For purposes of this section, "ethanol-blended ~~fuel~~ *gasoline*" means a fuel mixture ~~that is 90% of gasoline and 10% anhydrous ethanol~~ produced from agricultural products, including grain and wood or wood products, and that is used for the purpose of effectively and efficiently operating internal combustion engines.

(3) An entity subject to the requirements of subsection (1) may not take any disciplinary, judicial, administrative, or other adverse action against the operator of a motor vehicle for failing to purchase ethanol-blended ~~fuel~~ *gasoline* for the operation of the motor vehicle."

**Section 2.** Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property — description — taxable percentage.**

(1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of ~~gasohol~~ *ethanol-blended gasoline* during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

- (i) manufacture, mill, mine, produce, process, or fabricate materials;
- (ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;
- (iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;
- (iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or
- (v) earn 50% or more of their annual gross income from out-of-state sales.

(5) Class five property is taxed at 3% of its market value.”

**Section 3.** Section 15-70-201, MCA, is amended to read:

**“15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Agricultural use” means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) “Aviation dealer” means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) “Aviation fuel” means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) “Bulk delivery” means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) “Distributed” means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) “Distributor” means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends ~~alcohol~~ ethanol with gasoline.

(7) *“Ethanol” means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR parts 20 and 21 and that meets the standards for ethanol adopted pursuant to 82-15-103.*

(8) *“Ethanol-blended gasoline” means gasoline blended with ethanol. The percentage of ethanol in the blend is identified by the letter “E” followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10. A blend that is 85% denatured ethanol and 15% gasoline would be reflected as E-85.*

~~(7)~~(9) *“Export” means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.*

(8)(10) *“Exporter” means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.*

~~(9)~~ *“Gasohol” means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter “E” followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.*

~~(10)~~(11) (a) *“Gasoline” includes:*

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for ~~alcohol~~ ethanol blended into ~~gasohol~~ ethanol-blended gasoline, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive’s classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

~~(11)~~(12) *“Import” means to receive into a person’s possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.*

~~(12)~~(13) *“Importer” means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.*

~~(13)~~(14) “Improperly imported fuel” means aviation or gasoline fuel as defined in subsections (3) and ~~(10)~~ (11) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(14)~~(15) “Motor vehicle” means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(15)~~(16) “Person” means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(16)~~(17) “Use” means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.”

**Section 4.** Section 15-70-202, MCA, is amended to read:

**“15-70-202. License and security of gasoline distributors — denial or revocation of license.** (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department’s decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section “security” means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

(7) A distributor ~~may not who blends~~ *blend gasoline ethanol-blended gasoline must be unless* licensed ~~with~~ by the department. If a distributor cannot be licensed, the distributor is required to buy preblended ~~gasoline ethanol-blended gasoline.~~

**Section 5.** Section 15-70-204, MCA, is amended to read:

**“15-70-204. (Temporary) Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor’s license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) ~~Gasoline~~ *Ethanol-blended gasoline*, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning *on* the date that the requirement for use of ~~gasoline ethanol-blended gasoline~~ contained in 82-15-121 occurs, ~~gasoline ethanol-blended gasoline~~ is subject to the tax imposed in subsection (1)(b). (Terminates on occurrence of contingency—sec. 21, Ch. 452, L. 2005.)

**15-70-204. (Effective on occurrence of contingency) Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) ~~Gasohol, as defined in 15-70-201,~~ *Ethanol-blended gasoline* is subject to 85% of the tax imposed in subsection (1)(b)."

**Section 6.** Section 15-70-221, MCA, is amended to read:

**"15-70-221. Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing ~~alcohol~~ *ethanol* to be used in ~~gasohol~~ *ethanol-blended gasoline*, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid."

**Section 7.** Section 15-70-501, MCA, is amended to read:

**"15-70-501. Short title.** This part may be cited as the "~~Alcohol~~ *Ethanol* Tax Incentive and Administration Act of 1983".

**Section 8.** Section 15-70-502, MCA, is amended to read:

**"15-70-502. Purpose.** The purpose of this part is to establish schedules for the tax incentive for the production of ~~alcohol~~ *ethanol* to be blended for ~~gasohol~~ *ethanol-blended gasoline* and to provide for the proper administration and



enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of ~~alcohol fuel~~ *ethanol* production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.”

**Section 9.** Section 15-70-503, MCA, is amended to read:

**“15-70-503. Definitions.** As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) ~~“Alcohol distributor” means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.~~

(2)(1) “Department” means the department of transportation.

(2) *“Ethanol distributor” means any person who, for the purpose of making ethanol-blended gasoline, engages in the business of producing ethanol for sale, use, or distribution.*

(3) *“Ethanol-blended gasoline dealer” means any person who blends ethanol with gasoline to produce ethanol-blended gasoline for sale from a wholesale or retail outlet, for use, or for distribution in this state.*

(3)(4) “Export” means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) ~~“Gasohol” means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter “E” followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

(5) ~~“Gasohol dealer” means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.”~~

**Section 10.** Section 15-70-511, MCA, is amended to read:

**“15-70-511. Licensing of ~~alcohol~~ *ethanol* distributors.** Every ~~alcohol~~ *ethanol* distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth ~~such~~ information as *that* may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.”

**Section 11.** Section 15-70-512, MCA, is amended to read:

**“15-70-512. Distributor’s statement.** Each ~~alcohol~~ *ethanol* distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by ~~him~~ *the distributor*, that includes the following:

(1) the number of gallons of ~~alcohol~~ *ethanol* manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each ~~gasohol~~ *ethanol-blended gasoline* dealer to whom ~~he~~ *the distributor* sold ~~alcohol~~ *ethanol* and the number of gallons sold to each dealer; and

(3) ~~such~~ other information as *that* the department may reasonably require to administer the tax laws of this state.”

**Section 12.** Section 15-70-513, MCA, is amended to read:

**“15-70-513. Recordkeeping requirements.** The records of each ~~alcohol~~ *ethanol* distributor and ~~gasohol ethanol-blended gasoline~~ dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and ~~such~~ other information as *that* the department may require.”

**Section 13.** Section 15-70-514, MCA, is amended to read:

**“15-70-514. Examination of records.** The department or its authorized representative may examine the books, papers, records, and equipment of any ~~alcohol ethanol~~ distributor or ~~gasohol ethanol-blended gasoline~~ dealer.”

**Section 14.** Section 15-70-521, MCA, is amended to read:

**“15-70-521. Denaturing ~~alcohol ethanol~~ — refund authorized.** ~~Any alcohol~~ *An ethanol* distributor who, for the purpose of denaturing ~~alcohol ethanol~~ *ethanol* distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.”

**Section 15.** Section 15-70-522, MCA, is amended to read:

**“15-70-522. Tax incentive for production of ~~alcohol ethanol~~ — rules.** (1) (a) If the ~~alcohol ethanol~~ was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ~~alcohol ethanol~~ was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ~~alcohol ethanol~~ *ethanol* distributors for distilling ~~alcohol ethanol~~ *ethanol* that:

- (i) is to be blended with gasoline for sale as ~~gasohol ethanol-blended gasoline~~ in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as ~~gasohol ethanol-blended gasoline~~; or
- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ~~alcohol ethanol~~ *ethanol* distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ~~alcohol ethanol~~ *ethanol*. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ~~alcohol ethanol~~ *ethanol* tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase; and

(c) an ~~alcohol~~ *ethanol* distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the first year of production;

(ii) 25% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the second year of production;

(iii) 35% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the third year of production;

(iv) 45% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the sixth year of production.

(4) (a) An ~~alcohol~~ *ethanol* distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ~~alcohol~~ *ethanol* distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of ~~alcohol~~ *ethanol*;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ~~alcohol~~ *ethanol* tax incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall ~~prescribe~~ *adopt* rules necessary to carry out the provisions of this section ~~within 1 year of April 28, 2005~~. The department shall coordinate and request information and input from the ~~alcohol~~ *ethanol* production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

**Section 16.** Section 15-70-523, MCA, is amended to read:

**“15-70-523. Application for payment of tax incentive.** (1) The claimant shall apply for payment of *the* tax incentive by signed statement, on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the ~~gasohol~~ *ethanol-blended gasoline* dealer at the time of sale and delivery, showing total gallons of ~~alcohol~~ *ethanol* sold; and

(b) a certificate of blending issued by the ~~alcohol~~ *ethanol* purchaser showing the total gallons of ~~alcohol~~ *ethanol* blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.”

**Section 17.** Section 15-70-527, MCA, is amended to read:

**“15-70-527. Penalty for failure to file.** ~~Any alcohol~~ *An ethanol* distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction ~~must~~ *shall* be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both.”

**Section 18.** Section 17-6-317, MCA, is amended to read:

**“17-6-317. Participation by private financial institutions — rulemaking.** (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

- (i) 2% for the first 5 years if 15 or more jobs are created or retained;
- (ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;
- (iii) 6% for the second 5 years; and
- (iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the state's average weekly wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the state's average weekly wage, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan,

whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of ~~alcohol~~ ethanol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section."

**Section 19.** Section 75-11-302, MCA, is amended to read:

**"75-11-302. Definitions.** Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ~~alcohol~~ *ethanol* or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ~~gasohol~~ *ethanol-blended gasoline*, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

**Section 20.** Section 75-11-314, MCA, is amended to read:

**"75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations.** (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;



- (b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;
  - (c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;
  - (d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and
  - (e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.
- (2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.
- (3) ~~Alcohol~~ *Ethanol* that is blended with gasoline to be sold as ~~gasohol~~ *ethanol-blended gasoline* is subject to the fee provided in subsection (1).
- (4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.
- (5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

**Section 21. Name change — directions to code commissioner.** If legislation enacted by the 60th legislature contains a reference to gasohol, the code commissioner shall change the reference to ethanol-blended gasoline.

**Section 22. Effective date.** [This act] is effective on passage and approval.

Approved March 30, 2007

## CHAPTER NO. 101

[HB 190]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CARD GAMES; AMENDING SECTIONS 23-5-112, 23-5-306, 23-5-308, 23-5-313, 23-5-317, AND 23-5-710, MCA; REPEALING SECTION 23-5-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 23-5-112, MCA, is amended to read:

**"23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) *The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.*

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) *"House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.*

(17)(18) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17)(18) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(18)(19) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal

statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

~~(19)~~(20) “Keno” means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(20)~~(21) “Keno caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(21)~~(22) “License” means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(22)~~(23) “Licensee” means a person who has received a license from the department.

~~(23)~~(24) “Live card game” or “card game” means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(24)~~(25) (a) “Lottery” means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

~~(25)~~(26) “Manufacturer” means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

~~(26)~~(27) “Nonprofit organization” means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans’, fraternal, beneficial, civic, senior citizens’, or service organization established for purposes other than to conduct a gambling activity.

~~(27)~~(28) “Operator” means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

~~(28)~~(29) “Permit” means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

~~(29)~~(30) “Person” or “persons” means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(30)~~(31) “Premises” means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator’s license application and approved by the department.

(31)(32) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(32)(33) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(33)(34) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(34)(35) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(35)(36) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(36)(37) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(37)(38) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

**Section 2.** Section 23-5-306, MCA, is amended to read:

**“23-5-306. Live card game table — permit — fees — disposition of fees.** (1) (a) A person who has been granted an operator’s license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises, as provided in 23-5-119, may be granted an annual permit for the placement of live card game tables.

(b) *A permit is not required for social games played for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.*

(b)(c) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator’s license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator’s premises may not be prorated and must be:

(a) \$250 for the first table; and

(b) \$500 for each additional table.

(3) The department shall retain for administrative purposes \$100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.”

**Section 3.** Section 23-5-308, MCA, is amended to read:

**“23-5-308. Card game dealers — license.** (1) Except as provided in 23-5-318, a person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is \$75, and the annual renewal fee is \$25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer’s license.

(4) A licensed dealer shall ~~have keep on his~~ *the dealer’s person*, and display ~~upon request upon request,~~ *his the dealer’s license* when he is working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) ~~The rules must provide that:~~

~~(i) a temporary license may be obtained at the place where a person locally applies for a driver's license; and~~

~~(ii) the receipt received upon mailing by certified mail a completed license application and the fee required under subsection (2), return receipt requested, constitutes a temporary license.~~

~~(c) The department may not assess a fee for the temporary license.~~

~~(b) The rules must provide that a temporary license:~~

~~(i) may be issued at a local department office or at another public location designated by the department; and~~

~~(ii) may only be issued upon the payment of the license application fee and submission of an application, required fingerprints, and proof that the applicant for a temporary license has a verifiable offer of employment from a licensed operator or card room contractor."~~

**Section 4.** Section 23-5-313, MCA, is amended to read:

**"23-5-313. Rules of play to be posted — rake-off approved.** (1) ~~Rules governing the conduct of each game must be prominently posted within the sight of the players at a live card game table on the premises of a licensed operator. A licensed operator shall prominently display the following information within the sight of the players at a live card game table:~~

~~(a) rules governing the conduct of each game;~~

~~(b) notice of the maximum percentage rake-off; and~~

~~(c) rules governing the prohibition of credit gambling.~~

~~(2) The department may adopt rules specifying the size, display, and content of rules as provided in this part and the manner of taking the rake-off. The rules must include notice of the maximum percentage rake-off, if any, and must require that the person taking the rake-off do so in an obvious manner."~~

**Section 5.** Section 23-5-317, MCA, is amended to read:

**"23-5-317. Tournaments.** (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on the operator's premises may conduct up to 12 live card game tournaments a year on ~~his~~ *the operator's* premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) Before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a \$10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

*(c) A licensed operator may participate in a progressive card game tournament in which the ultimate prize is not awarded until the final round of the tournament is completed.*

*(d) At least 50% of the total of all entrance fees for any tournament that is represented as a charitable tournament must be paid to a charitable, educational, or recreational nonprofit organization.*

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) Only a dealer licensed under 23-5-308 may deal cards at a poker or panguingue tournament.

(7) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

(8) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

*(9) The prize for a tournament may be the right to participate in another tournament if the value of a seat in the higher-level tournament is equivalent to the value of the expected top prize for the tournament.*

*(10) The total amount paid by an individual to enter a tournament, including any additional purchase of chips or other payment during the tournament, may not exceed \$2,500.*

~~(9)(11)~~ The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided.”

**Section 6.** Section 23-5-710, MCA, is amended to read:

**“23-5-710. Requirements for conducting casino nights.** A nonprofit organization that has obtained a permit under 23-5-706 shall conduct a casino night in compliance with the following conditions:

(1) (a) Except as provided in subsection (1)(b), a casino night may not last more than 12 consecutive hours.

(b) A casino night may be split into two separate, 6-consecutive hour sessions that may not be held on the same day but must be held in the same calendar year.

(2) The casino night must be managed and operated only by members of the nonprofit organization that was issued the permit under 23-5-706. The members may not be compensated for their services.



(3) Only merchandise or cash may be awarded as prizes.

(4) Proceeds derived from the casino night, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds.

(5) If cash prizes are awarded, the prizes for bingo and keno may not exceed the prize limits established in 23-5-412. Live card games must be limited to those authorized in 23-5-311, and the prizes may not exceed the prize amount established in 23-5-312.

(6) *A casino night may not include a card game tournament provided for in 23-5-317.*

**Section 7. Regulation of house players.** (1) The department shall provide rules to regulate the use of house players by licensed operators and licensed card room contractors.

(2) House players may be used only for the purpose of starting a card game or maintaining a sufficient number of players in a card game.

(3) Any chips or money advanced by an operator, card room contractor, or dealer to a house player may not become a debt of the player.

(4) The operator, card room contractor, or dealer shall identify house players upon request.

**Section 8. Repealer.** Section 23-5-319, MCA, is repealed.

**Section 9. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 7].

**Section 10. Effective date.** [This act] is effective July 1, 2007.

Approved March 30, 2007

## CHAPTER NO. 102

[HB 193]

AN ACT AUTHORIZING A PERSON WHO IS CERTIFIED AS DISABLED AND CARRIES A PERMIT TO HUNT FROM A VEHICLE THAT IS ISSUED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO HUNT FROM AN OFF-HIGHWAY VEHICLE OR SNOWMOBILE IN AREAS WHERE HUNTING AND MOTORIZED USE ARE PERMITTED, AS LONG AS THE OFF-HIGHWAY VEHICLE OR SNOWMOBILE IS PROPERLY MARKED; AMENDING SECTIONS 87-2-803 AND 87-3-125, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 87-2-803, MCA, is amended to read:

**“87-2-803. Persons with disabilities — service members — definitions.** (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A

person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (9). Each board must have at least one Montana-licensed physician as a member.

(4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, ~~or may hunt by shooting a firearm from;~~

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; *or*

(iii) *an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.*

(b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special

antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) *of this section*, and must be accompanied by a companion, as provided in subsection (4)(c) *of this section*.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, “disabled person”, “person with a disability”, or “disabled” means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person’s functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician under subsection (9) must be on a form provided by the department.

(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member’s return, based on the member’s election, and in the license year after the member’s election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a \$25 Class AAA resident combination sports license in the year of election and the license year after the member’s election.

(b) To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."

**Section 2.** Section 87-3-125, MCA, is amended to read:

**"87-3-125. Restrictions on use of motor vehicles while hunting.** (1) ~~No~~ Except as provided in 87-2-803(4)(a)(iii), a person, while hunting game animals or game birds, may *not* use a motor-driven vehicle other than on an established road or trail unless ~~he~~ *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 ~~such~~ permission. After the retrieval, the motor-driven vehicle is to 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.

(2) ~~No~~ A person, while hunting game animals or game birds, may *not* 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 ~~any~~ a game animal or game bird with the use or aid of any motor-driven vehicle.

(3) ~~No~~ A person, while hunting game animals or game birds, may *not* 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.

(4) ~~It is unlawful for a~~ A person ~~to~~ may *not* use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state, ~~providing that this.~~ *This* subsection does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(5) The restrictions in subsections (1) through (3) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement."

**Section 3. Effective date.** [This act] is effective March 1, 2008.

Approved March 30, 2007

## CHAPTER NO. 103

[HB 244]

AN ACT EXPANDING THE PROMOTIONAL ACTIVITIES THAT MAY BE CONDUCTED BY A REGULATED TELECOMMUNICATIONS SERVICE PROVIDER WITHOUT ADVANCE APPROVAL OF THE PUBLIC SERVICE

COMMISSION; AMENDING SECTION 69-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-3-305, MCA, is amended to read:

**“69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A *Except as provided in subsection (5)(a), a public utility may not:*

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) A provider of regulated telecommunications service may offer, for a limited period of time, rebates, price reductions, or waivers of charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing for services ~~other than basic local exchange access to end users~~ does not require advance approval of the commission. Informational price lists must be filed with the commission on or before the date that the promotion begins. ~~Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted.~~

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. However, this does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.”

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

Approved March 30, 2007

## CHAPTER NO. 104

[HB 286]

AN ACT REVISING INCENTIVES UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM TO ASSIST HIGH-POVERTY COUNTIES IN WORKFORCE TRAINING AND OTHER ECONOMIC DEVELOPMENT OPPORTUNITIES; AMENDING SECTIONS 90-1-201, 90-1-202, AND 90-1-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 90-1-201, MCA, is amended to read:

**“90-1-201. Big sky economic development program — definitions.**

(1) (a) There is a big sky economic development program that consists of:

- (i) the big sky economic development fund established in 17-5-703; and
- (ii) the economic development special revenue account provided for in 90-1-205.

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under this part.

(2) As used in this part, the following definitions apply:

(a) “Certified regional development corporation” has the meaning provided in 90-1-116.

(b) “Department” means the department of commerce provided for in 2-15-1801.

(c) “Economic development organization” means:

(i) (A) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(B) an entity certified by the department under 90-1-116; or

(C) an entity established by a local government; or

(ii) an entity actively engaged in economic development and business assistance work in a region of the state.

(d) “*High-poverty county*” means a county in this state in which 14% or more of people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available.

(~~d~~)e) “Local government” means a tribal government, county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds.”

**Section 2.** Section 90-1-202, MCA, is amended to read:

**“90-1-202. Purpose.** The legislature finds and declares that economic development is a public purpose. The purpose of the big sky economic development program is to assist in economic development for Montana that will:

- (1) create good-paying jobs for Montana residents;
- (2) promote long-term, stable economic growth in Montana;
- (3) encourage local economic development organizations;
- (4) create partnerships between the state, local governments, and local economic development organizations that are interested in pursuing these same economic development goals;
- (5) retain or expand existing businesses; ~~and~~
- (6) provide a better life for future generations through greater economic growth and prosperity in Montana; *and*
- (7) *encourage workforce development, including workforce training and job creation, in high-poverty counties by providing targeted assistance.”*

**Section 3.** Section 90-1-204, MCA, is amended to read:

**“90-1-204. Priorities for funding — rulemaking.** (1) The department must receive proposals for grants and loans from local governments. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the treasure state endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the use of funds so that, *except as provided in subsection (2)(b)*, the needs of rural areas are balanced with the needs of the state’s urban centers.

*(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.*

~~(b)~~(c) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

- (i) local governments include but are not limited to:
  - (A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;
  - (B) a grant or low-interest loan for relocation expenses for a basic sector company; and
  - (C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;
- (ii) a certified regional development corporation include:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

(e)(d) (i) The rules must provide for distribution methods for financial assistance available to local governments. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding.

(ii) Funding may not exceed \$5,000 for each expected job, *except that funding for a project in a high-poverty county may not exceed \$7,500 for each expected job.*

(iii) The rules must require equal matching funds for a grant or loan, *except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county.*

(e) *The rules may provide for greater incentives for a high-poverty county.*

(e)(f) The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

(e)(g) A grant or loan may be made only for a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county in which the employees are to be principally employed.”

**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 band of Chippewa.

**Section 5. Effective date.** [This act] is effective July 1, 2007.

Approved March 30, 2007

## CHAPTER NO. 105

[HB 332]

AN ACT ADOPTING NATIONALLY ACCEPTED NOISE LIMITS FOR MOTORCYCLES AND QUADRICYCLES; REQUIRING MOTORCYCLES AND QUADRICYCLES TO BE EQUIPPED WITH SPARK ARRESTERS; AND AMENDING SECTION 61-9-418, MCA.

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

**Section 1.** Section 61-9-418, MCA, is amended to read:

**“61-9-418. Motorcycle and quadricycle noise suppression devices — motorcycle and quadricycle spark arrester.** (1) All motorcycles or quadricycles operated on the streets and highways of this state ~~shall~~ *must* be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order and in constant operation. In addition, all motorcycles and quadricycles operating on streets and highways ~~shall~~ *must* meet the following noise decibel limitations, on the standard A scale, ~~such~~ *decibel limitations* to be measured at 50 feet ~~distant~~ from the closest point to the motorcycle or quadricycle:



- (1)(a) any cycle manufactured prior to 1970.....92 db(A)
- (2)(b) any cycle manufactured after 1969 but prior to 1973.....88 db(A)
- (3)(c) any cycle manufactured after 1972 but prior to 1975 .....86 db(A)
- (4)(d) any cycle manufactured after 1974 but prior to 1978 .....80 db(A)
- (5)(e) any cycle manufactured after 1977 but prior to 1988 .....75 db(A)
- (6)(f) any cycle manufactured after 1987 .....70 db(A)

(2) (a) *Except as provided in subsection (2)(b), a motorcycle or quadricycle may be operated off of a highway on the public lands only if the motorcycle's or quadricycle's noise emissions do not exceed 96 db(A), using test procedures established by the society of automotive engineers under standard J-1287.*

(b) *The noise limitations in subsection (2)(a) do not apply to motorcycles or quadricycles that are operated for special events permitted on closed courses by a state entity or local government.*

(c) *A motorcycle or quadricycle may not be operated off of a highway unless it is equipped with an adequate spark arrester to prevent the escape of sparks or other burning material from the motorcycle's or quadricycle's engine."*

Approved March 30, 2007

## CHAPTER NO. 106

[HB 347]

AN ACT INCREASING THE AMOUNTS FOR WHICH A CONTRACT IS NOT REQUIRED FOR BUILDING, FURNISHING, REPAIRING, OR OTHER WORK FOR THE BENEFIT OF A SCHOOL DISTRICT OR PURCHASING OF SUPPLIES FOR A SCHOOL DISTRICT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-9-204, MCA, is amended to read:

**“20-9-204. Conflicts of interests, letting contracts, and calling for bids.** (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.

(2) For the purposes of subsection (1):

(a) “pecuniary interest” does not include holding an interest of 10% or less in a corporation; and

(b) “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.

(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) of this section, whenever ~~the estimated cost of~~ any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district ~~exceeds the sum of \$25,000 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 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:

(a)(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b)(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c)(iii) an attorney;

(d)(iv) a consulting actuary;

(e)(v) a private investigator licensed by any jurisdiction;

(f)(vi) a claims adjuster;

(g)(vii) an accountant licensed under Title 37, chapter 50; or

(h)(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.

(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) 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) 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 2. Effective date.** [This act] is effective on passage and approval.

Approved March 30, 2007

## CHAPTER NO. 107

[HB 378]

AN ACT CLARIFYING AND REVISING THE MAKEUP OF THE BOARD OF NURSING HOME ADMINISTRATORS; ESTABLISHING LEGISLATIVE FINDINGS AND PURPOSE FOR THE BOARD; AND AMENDING SECTION 2-15-1735, MCA.

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

**Section 1. Legislative findings — purpose.** The legislature finds that the profession of nursing home administration affects the lives of an often frail and vulnerable population that includes older and disabled Montanans who are unable to live independently. The purpose of this chapter is to regulate and control the profession to protect the public health, welfare, and safety by ensuring the ethical, qualified, and professional practice of nursing home administration.

**Section 2.** Section 2-15-1735, MCA, is amended to read:

**“2-15-1735. Board of nursing home administrators.** (1) There is a board of nursing home administrators.

(2) The board consists of ~~five~~ *six* voting members appointed by the governor with the consent of the senate. ~~No more than two~~ *Three* members ~~may~~ *must* be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members must be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of public health and human services or the director’s designee is an ex officio, nonvoting member of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member must be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

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

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 9, part 1, and the provisions of Title 37, chapter 9, apply to [section 1].

Approved March 30, 2007

## CHAPTER NO. 108

[HB 449]

AN ACT TRANSFERRING BUPRENORPHINE FROM A SCHEDULE V DRUG TO A SCHEDULE III DRUG; AMENDING SECTIONS 50-32-226 AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 50-32-226, MCA, is amended to read:

**“50-32-226. Specific dangerous drugs included in Schedule III.** Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) benzphetamine;
- (b) chlorphentermine;
- (c) clortermine; and
- (d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

- (d) chlorhexadol;
- (e) lysergic acid;
- (f) lysergic acid amide;
- (g) methyprylon;
- (h) sulfondiethylmethane;
- (i) sulfonethylmethane;
- (j) sulfonmethane; and

(k) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyzapazon.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; *or*

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; *or*

(i) *any material, compound, mixture, or preparation containing buprenorphine.*

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

(a) boldenone;

(b) chlorotestosterone, also known as 4-chlortestosterone;

(c) clostebol;

(d) dihydrochlormethyltestosterone;

(e) dihydrotestosterone, also known as 4-dihydrotestosterone;

(f) drostanolone;

(g) ethylestrenol;

- (h) fluoxymesterone;
- (i) formebulone, also known as formebolone;
- (j) mesterolone;
- (k) methandienone;
- (l) methandranone;
- (m) methandriol;
- (n) methandrostenolone;
- (o) methenolone;
- (p) methyltestosterone;
- (q) mibolerone;
- (r) nandrolone;
- (s) norethandrolone;
- (t) oxandrolone;
- (u) oxymestrone;
- (v) oxymetholone;
- (w) stanolone;
- (x) stanozolol;
- (y) testolactone;
- (z) testosterone; or
- (aa) trenbolone.”

**Section 2.** Section 50-32-232, MCA, is amended to read:

**“50-32-232. Specific dangerous drugs included in Schedule V.**

Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

~~(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category.~~

~~(2)(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (2)(a) (1)(a) through (2)(f) (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:~~

~~(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;~~

~~(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;~~

~~(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;~~

~~(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;~~

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

~~(3)~~(2) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.”

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

Approved March 30, 2007

## CHAPTER NO. 109

[HB 531]

AN ACT ESTABLISHING THE WARRIOR TRAIL HIGHWAY ON U.S. HIGHWAY 212 FROM THE 510 EXIT AT INTERSTATE 90 TO THE U.S. HIGHWAY 212 INTERSECTION WITH THE WYOMING BORDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, southeastern Montana is rich in cultural history and has been inhabited by industrious and resourceful people from the time of the first Montanans, the Indians, and pioneers and homesteaders, to the present day; and

WHEREAS, this culture is kept alive today through spirited community events, such as the Northern Cheyenne powwow, Crow fair, rodeos, and historical recreations; and

WHEREAS, the Legislature recognizes the importance of tourism to economic development and small business development.

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

**Section 1. Warrior trail highway.** (1) There is established the warrior trail highway composed of existing U.S. highway 212 from the 510 exit at interstate 90 to the U.S. highway 212 intersection with the Wyoming border.

(2) When existing road signs along U.S. highway 212, as described in subsection (1), need replacement, the department shall erect road signs reflecting the name designation in subsection (1).

(3) The department shall erect signs, consistent in size with interstate directional signs, in northbound and southbound locations on interstate 90 so as to alert motorists of the exit to the warrior trail highway.

(4) Maps that identify roadways in Montana must reflect the name designation in subsection (1) when maps are updated or replaced.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved March 30, 2007

## CHAPTER NO. 110

[HB 623]

AN ACT CLARIFYING THE NATURE OF PROPERTY TAX LIEN SALES; CORRECTING TERMINOLOGY TO ENSURE THAT SALES AND SALES CERTIFICATES REFLECT THAT WHAT IS SOLD UPON NONPAYMENT OF PROPERTY TAXES IS A LIEN UPON THE PROPERTY; PROVIDING THAT PROPERTY TAX LIEN SALES ARE CONDUCTED AT A COUNTY TREASURER'S OFFICE; AMENDING SECTIONS 7-2-2722, 7-6-4423, 15-16-101, 15-17-121, 15-17-122, 15-17-124, 15-17-131, 15-17-211, 15-17-212, 15-17-213, 15-17-214, 15-17-317, 15-17-321, 15-17-323, 15-17-324, 15-17-325, 15-17-326, 15-18-111, 15-18-113, 15-18-114, 15-18-211, 15-18-212, 15-18-213, 15-18-214, 15-18-215, 15-18-217, 15-18-218, 39-3-501, 85-7-2136, 85-7-2152, 85-7-2157, 85-7-2158, 85-7-2159, 85-7-2162, 85-7-2163, AND 85-8-601, MCA.

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

**Section 1.** Section 7-2-2722, MCA, is amended to read:

**"7-2-2722. Disposition of property.** Each county to which any part of the territory of an abandoned county is attached and made a part ~~shall~~:

(1) *shall* succeed to, *must* have, *must* possess, and *shall* own all real estate, all improvements ~~thereon~~ *on the property*, all tangible property, and all county highways situated within the territory of the abandoned county attached to ~~such~~ *the* county and all certificates of tax ~~sale~~ *lien sales* to lands and improvements ~~thereon~~ *on the lands* situated within ~~such~~ *the* territory; and

(2) ~~have~~ *has* the same right and power to sell and assign ~~such~~ *the* certificates and to apply for and obtain tax deeds to ~~such~~ *the* lands and improvements and to sell and dispose of the ~~same~~ *lands and improvements* as were or would have been possessed by the abandoned county if it had not been abandoned."

**Section 2.** Section 7-6-4423, MCA, is amended to read:

**"7-6-4423. Sales for delinquent taxes when municipality collects municipal tax.** (1) (a) In a city or town that collects its own taxes or special assessments when any taxes or assessments become delinquent, a tax *lien* sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessments become delinquent, certifies the delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) The certificate must contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person taxed or assessed;

(iii) the date when the tax or assessment became delinquent;

(iv) the amount of the delinquent tax or assessment; and the penalty to be added, if any.

(c) If any special assessment is payable in installments and any installment becomes delinquent, the amount of the delinquent installment must be included in the certificate. If the city or town council, by the adoption of an appropriate resolution, declares the total assessment remaining unpaid to be delinquent, as provided in 7-12-4182, then that total must be included in the certificate.



(2) Upon receipt of the certificate, the county treasurer shall enter the delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes shall include all city and town delinquent taxes and assessments. There may be only one sale for each piece of property. The sale must cover the aggregate of the city, town, county, and state taxes and special assessments, including penalties, interest, and costs provided by law.”

**Section 3.** Section 15-16-101, MCA, is amended to read:

**“15-16-101. Treasurer to publish notice — manner of publication.** (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% ~~per~~ a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% ~~per~~ a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) itemized city services and special improvement district assessments collected by the county;

(iv) the number of the school district in which the property is located; and

(v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(b) If the property is the subject of a tax *lien* sale for which a tax ~~sale~~ *lien sale* certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax *lien* sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iii) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.”

**Section 4.** Section 15-17-121, MCA, is amended to read:

**“15-17-121. Definitions.** Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) “Certificate” or “tax sale *lien sale* certificate” means the document described in 15-17-212.

(2) (a) “Cost” means the cost incurred by the county as a result of a taxpayer’s failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

- (i) preparing the list of delinquent taxes;
- (ii) preparing the notice of pending tax *lien sale*;
- (iii) conducting the tax *lien sale*;
- (iv) assigning the county’s interest in a tax lien to a third party;
- (v) identifying interested persons entitled to notice of the pending issuance of a tax deed;
- (vi) notifying interested persons;
- (vii) issuing the tax deed; and
- (viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) The term includes receipted costs that are required by law and incurred by the purchaser of a property tax lien other than the county. The purchaser of the property tax lien shall provide receipts to the county treasurer upon issuance of a tax sale *lien sale* certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216.

(c) The term does not include interest for payments for the following:

- (i) postage for certified mailings and certified mailings with return receipt requested;
- (ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;
- (iii) publishing costs for required publications; and
- (iv) filing costs for proof of notice.

(3) “County” means any county government and includes those classified as consolidated governments.

(4) “Property tax lien” means a lien acquired by the payment at a tax *lien sale* of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) “Purchaser” means any person, other than the person to whom the property is assessed, who pays at the tax *lien sale* the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax *lien* sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax *lien* representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a *lien*."

**Section 5.** Section 15-17-122, MCA, is amended to read:

**"15-17-122. Notice of pending tax *lien* sale.** (1) The county treasurer shall publish or post a notice of a pending tax *lien* sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a *lien* upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax *lien* sale, the *lien* will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 7-5-2411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places. The notice must be first published or posted on or before the last Monday in June.

(4) Except as provided in 15-17-211(2), the tax *lien* sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the ~~county courthouse~~ *office of the county treasurer*.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and tax *lien* sale. In the event of improper notification, the tax *lien* sale may be held on all property properly noticed.

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

**Section 6.** Section 15-17-124, MCA, is amended to read:

**“15-17-124. Irregular assessment.** If the county treasurer discovers, prior to the tax *lien* sale, that property on which the taxes are delinquent has been irregularly assessed, the county treasurer may not offer the property or a property tax lien for sale. The taxes on the property must be listed on the property tax record as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected.”

**Section 7.** Section 15-17-131, MCA, is amended to read:

**“15-17-131. Common undivided ownership interest — separate assessment — property tax payments.** (1) Except as provided in subsection (2), payment of all property taxes on a parcel by any co-owner is considered payment by all owners, whether or not the property is assessed and taxed separately to co-owners or to a single owner. Any payment by a co-owner in excess of the amount assessed to the co-owner must be the total amount due on the parcel or a partial payment amounting to a year of deficiency, as provided in 15-16-102(5)(a). The nonpayment of taxes by a co-owner who is separately assessed and taxed subjects only the interest of the nonpaying co-owner to a tax *lien* sale.

(2) (a) A co-owner may receive a tax lien on property in which the co-owner has an undivided interest if:

(i) the co-owner pays the proportional amount of taxes on that co-owner’s interest and on another co-owner’s interest;

(ii) the paying co-owner has notified the nonpaying co-owner of the property tax payments and annually demands reimbursement in writing by certified mail, return receipt requested, addressed to the nonpaying co-owner’s last-known mailing address; and

(iii) the paying co-owner has paid the property taxes for 3 consecutive years without reimbursement.

(b) Upon proof that a co-owner has complied with the provisions of this subsection (2), the paying co-owner is considered the purchaser of a tax lien on the ownership interest of the nonpaying co-owner and the county treasurer shall prepare a tax sale *lien sale* certificate with the paying co-owner as the purchaser. The certificate shall conform to the provisions of 15-17-212, except the certificate need not contain the information required in 15-17-212(1)(a) and (1)(b). The treasurer shall comply with the provisions of 15-17-212(2) regarding the certificate.

(c) For the purposes of this subsection (2), if there are more than two co-owners, single and multiple paying co-owners can receive a tax lien on the undivided interests of single and multiple nonpaying co-owners.”

**Section 8.** Section 15-17-211, MCA, is amended to read:

**“15-17-211. Conduct of tax *lien* sale.** (1) On the date and at the time and place specified in the notice, the county treasurer shall, except as provided in 15-17-124, begin the tax *lien* sale of all property described in the list required in 15-17-122(2). The tax *lien* sale must continue until the county treasurer declares it over, but must continue for a period of not less than 1 day. The treasurer is not required to read the list but shall make a copy of the list available for public inspection during regular business hours.

(2) The treasurer may postpone the day of commencing the *tax lien* sale on a day-to-day basis without publishing a new notice, ~~provided that~~ *if* the sale is held within 3 weeks from the day first fixed.

(3) Property assessed under 15-17-324 that has not been sold to a purchaser other than the county may, at the discretion of the county treasurer, be offered for sale at tax *lien* sales subsequent to the *tax lien* sale at which it was first offered.”

**Section 9.** Section 15-17-212, MCA, is amended to read:

**“15-17-212. Tax sale *lien sale* certificate.** (1) After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax ~~sale~~ *lien sale* certificate that must contain:

- (a) the date on which the property taxes became delinquent;
- (b) the date on which a property tax lien was sold at a tax *lien* sale;
- (c) the name and address of record of the person to whom the taxes were assessed;
- (d) a description of the property on which the taxes were assessed;
- (e) the name and mailing address of the purchaser;
- (f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;
- (g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;
- (h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and
- (i) an identification number corresponding to the tax ~~sale~~ *lien sale* certificate number recorded by the county treasurer as required in 15-17-213.

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk. A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax *lien* sales.

(3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.”

**Section 10.** Section 15-17-213, MCA, is amended to read:

**“15-17-213. Treasurer to record tax *lien* sales.** Prior to delivering the tax ~~sale~~ *lien sale* certificate to the purchaser, the county treasurer shall make a record of the tax *lien* sale. The record must include:

- (1) the name and address of the purchaser;
- (2) the date on which the tax lien was purchased;

(3) a description of the property on which the certificate is a lien, which description must correspond to the description listed on the certificate;

(4) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs; and

(5) a number identifying the tax ~~sale~~ *lien sale* certificate issued upon payment of the delinquency.”

**Section 11.** Section 15-17-214, MCA, is amended to read:

**“15-17-214. County as purchaser — assignment.** (1) If no person pays the delinquent taxes, including penalties, interest, and costs, on the first day of the tax *lien* sale, the county is considered to be the purchaser.

(2) (a) After ~~the 21st day following the first day of the tax~~ *lien* sale, the county treasurer shall identify and list all property *tax liens* that ~~was were~~ sold at the tax *lien* sale. ~~He~~ *The county treasurer* shall also record that the county is the purchaser of all property remaining unsold and upon which the taxes remain delinquent.

(b) The record of the property in which the county is listed as the purchaser may be made by the treasurer by a separate tax ~~sale~~ *lien sale* certificate of each property or by reference to the property as recorded in the list required under 15-16-301.

(3) A property tax lien of the county in any property acquired by the county under subsection (1) must be assigned by the county treasurer, as provided in 15-17-323, upon the payment of all delinquent taxes, including penalties, interest, and costs specified in 15-17-323.”

**Section 12.** Section 15-17-317, MCA, is amended to read:

**“15-17-317. Municipality as purchaser.** Whenever property that has been struck off to the county at a tax *lien* sale under 15-17-214 is subject to the lien of delinquent special assessments and has not been assigned under 15-17-214 or 15-17-323 at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired in the property at the *tax lien* sale to the municipality upon payment of any delinquent taxes, ~~(excluding assessments),~~ and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality, who shall file it. A charge may not be made for the duplicate certificate when the municipality is the purchaser, and the county treasurer shall make an entry “sold to the municipality” on the property tax record opposite the tax. The county treasurer must be credited with the delinquent amount in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable.”

**Section 13.** Section 15-17-321, MCA, is amended to read:

**“15-17-321. Resale for nonpayment.** (1) If a purchaser other than the county does not pay the delinquent taxes, including penalties, interest, and costs, before 10 a.m. on the next business day following the day of purchase at a tax *lien* sale, the property must be made available for sale for the amount of the delinquent taxes, including penalties, interest, and costs, on the following business day of the *tax lien* sale, except as provided in subsection (2).

(2) If the sale was made on the last day of the tax *lien* sale and payment was not received as provided in subsection (1), the county is considered to be the purchaser as provided in 15-17-214.”

**Section 14.** Section 15-17-323, MCA, is amended to read:

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

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

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

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

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

..... County Treasurer

..... County

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

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

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

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

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

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

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

(f) the signature of the new assignee; and

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

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

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

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

**Section 15.** Section 15-17-324, MCA, is amended to read:

**"15-17-324. Assessment of property sold at tax *lien* sale.** (1) The assessment of property on which a tax ~~sale~~ *lien sale* certificate has been issued or for which the county is listed as the purchaser, as provided in 15-17-214, continues in the same manner as other property is assessed.

(2) If any assessed taxes are not paid when due, they are delinquent."

**Section 16.** Section 15-17-325, MCA, is amended to read:

**"15-17-325. Sale not voided by misnomer of ownership.** When a tax *sale lien* certificate is acquired, as provided in 15-17-212, or when the county is listed as the purchaser, as provided in 15-17-214, and the taxes were properly assessed on the property of a particular person, no misnomer of ownership or other mistake relating to ownership affects the sale or renders it void or voidable."

**Section 17.** Section 15-17-326, MCA, is amended to read:

**"15-17-326. Voided *tax lien* sale — refund — limitation on action for royalty interest.** (1) If a tax *lien* sale held under the provisions of this chapter is declared void by a court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the *tax lien* sale or by any assignee must be refunded, with interest at the rate payable upon delinquencies, as provided in 15-16-102, from the date of the payment, to the purchaser or owner of the tax ~~sale~~ *lien sale* certificate, together with any penalty paid by the purchaser.

(2) Following the payment of a refund as provided in subsection (1), the county is considered the purchaser and has a property tax lien upon the property for the legal taxes on the property accruing from the date of delinquency, plus penalties and interest as provided in 15-16-102. Any money refunded that was received, as provided in 15-17-212, and distributed by the treasurer to the state or a city, town, or district must be charged to the state, city, town, or district, respectively, by the treasurer and deducted from the next money due the state, city, town, or district on account of taxes paid or collected. A purchaser of a property tax lien or owner ~~thereof~~ *of a property tax lien* by assignment ~~where~~ *when* sales have been made by a city or town ~~which~~ *that* by resolution or ordinance collects its own taxes instead of having the ~~same~~ *taxes*



collected by the county treasurer must be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor or, ~~where~~ *when* applicable, the city manager or ~~chairman~~ *presiding officer* of the city commission. The city or town clerk or city or town treasurer, as appropriate, shall make proper charges and deductions against the respective funds of the city or town upon the next collection of taxes by the city or town.

(3) The purchaser has a lien upon the property for the amount of taxes, penalties, interest, and costs paid, with the interest to be at the rate specified for delinquencies in 15-16-102. If the purchaser is in possession of the property and resides ~~thereon~~ *on the property*, ~~he~~ *the purchaser* may not be ejected from the property until ~~his~~ *the purchaser's* lien has been liquidated.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, and adverse possession, may apply in a suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.”

**Section 18.** Section 15-18-111, MCA, is amended to read:

**“15-18-111. Time for redemption — interested party.** (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax *lien* sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax *lien* sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax *lien* sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax *lien* sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(3) For the purposes of this chapter, an “interested party” includes a mortgagee, vendor of a contract for deed or the vendor’s successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person who has an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter.”

**Section 19.** Section 15-18-113, MCA, is amended to read:

**“15-18-113. Treasurer to record redemptions.** (1) Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person’s agent to the county treasurer and refunded to the person listed as purchaser, as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214, or distributed, as provided in 15-18-114, the word “redeemed”, the date, and the name of the redemptioner must be marked by the county treasurer on the tax sale *lien sale* certificate or in the record required in 15-17-214. Upon redemption, the county treasurer shall execute a certificate of redemption to be filed or recorded with the county clerk and recorder.

(2) The form of the certificate of redemption may be made as follows:

CERTIFICATE OF REDEMPTION

I, ....., the treasurer of ..... County, certify the following:

1. For tax years ..... (years), the taxes were delinquent on the following real property: ..... (description of the property).

2. The tax lien on the property was sold on.....(date of the tax *lien sale*). Tax ~~Sale~~ *Lien Sale* Certificate No. .... or Tax Lien Assignment No. .... (if applicable).

3. The tax lien was redeemed on ..... (date of redemption) by the payment of:

Taxes	.....
Penalty	.....
Interest	.....
Cost	.....
Total	.....
Receipt Number	.....

4. The redemption was made by ..... (name of redemptioner).

Date:.....

.....  
Signature”

**Section 20.** Section 15-18-114, MCA, is amended to read:

**“15-18-114. Distribution of redemption proceeds.** (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the county treasurer shall distribute to the person listed as the purchaser on the tax ~~sale~~ *lien sale* certificate and in the record kept by the county treasurer the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1).

(b) (i) The distribution must be made by certified mail, return receipt requested, by the county treasurer to the purchaser at the address listed on the tax ~~sale~~ *lien sale* certificate as provided in 15-17-212(1)(e).

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax ~~sale~~ *lien sale* certificate;

(B) the money ~~will~~ *must* be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money ~~will~~ *must* be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed.”

**Section 21.** Section 15-18-211, MCA, is amended to read:

**“15-18-211. Tax deed — fee.** (1) Except as provided in subsection (3), if the property tax lien is not redeemed in the time allowed under 15-18-111, the county treasurer shall grant the purchaser a tax deed for the property. The deed must contain the same information as is required in a tax ~~sale~~ *lien sale* certificate under 15-17-212, except the description of the property must be the full legal description, and a statement that the property tax lien was not redeemed during the redemption period provided in 15-18-111.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the purchaser \$25 plus all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving the notice required in 15-18-212 for making the deed, which fee must be deposited in the county general fund.

(b) If the purchaser is the county, no fee may be charged for making the deed.

(c) Reasonable costs incurred by the county in searching the county records to identify persons entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

(3) If the purchaser is the county and no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs ~~him~~ *the county treasurer* to issue a tax deed.

(4) Deeds issued to purchasers must be recorded by the county clerk as provided in Title 7, chapter 4, part 26, except that when the county is the purchaser and subsequent tax deed holder, the county clerk may not charge a fee for recording the deed.”

**Section 22.** Section 15-18-212, MCA, is amended to read:

**“15-18-212. Notice — proof of notice — penalty for failure to notify.** (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax ~~sale~~ *lien sale* certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax *sale lien sale* certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax *sale lien sale* certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax *sale lien sale* certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

- (b) a statement that the address of the interested party is unknown;
- (c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and
- (d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax ~~sale~~ *lien sale* certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax *lien* sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, ~~that~~ a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

**Section 23.** Section 15-18-213, MCA, is amended to read:

**"15-18-213. Form of tax deed — prima facie evidence.** (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made in substance as follows:

This deed is made by ..... (name of county treasurer), county treasurer of the county of ..... (name of county), in the state of Montana, to ..... (name of purchaser, the purchaser's agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for ..... (year) the following real property ..... (description of the property); and

Whereas, the taxes for ..... (year) levied against the property amounted to \$.....; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to ..... (name of purchaser or the purchaser’s agent or assignee) on ..... (date, including year) for the sum of \$....., which amount included delinquent taxes in the amount of \$....., penalties in the amount of \$....., interest in the amount of \$....., and other costs in the amount of \$.....; and

Whereas, a tax sale lien sale certificate was duly issued and filed or the sale otherwise recorded as required by law; and

Whereas, notice was given to interested parties in accordance with 15-18-212 that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been redeemed by ..... (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, ..... (treasurer’s name), county treasurer of the county of ....., in the state of Montana, in consideration of the sum of \$..... paid, hereby grant to ..... (name of purchaser or the purchaser’s agent or assignee) all the property situated in ..... County, state of Montana, described in this document.

Witness my hand on this date ..... (date, including year).

.....County Treasurer  
.....County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

- (a) the property was assessed as required by law;
- (b) the taxes were levied in accordance with law;
- (c) the taxes were not paid when due;
- (d) notice of tax lien sale was given and a property tax lien was sold at the proper time and place as provided by law;
- (e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;
- (f) the person who executed the deed was legally authorized to do so; and
- (g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax.”

**Section 24.** Section 15-18-214, MCA, is amended to read:

**“15-18-214. Effect of deed.** (1) A deed issued under this chapter conveys to the grantee absolute title to the property described therein in the deed as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

- (a) when the claim is payable after the execution of the deed and:
  - (i) a property tax lien attaches subsequent to the tax lien sale; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when the land is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued.”

**Section 25.** Section 15-18-215, MCA, is amended to read:

**“15-18-215. Form of notice that tax deed may issue.** Section 15-18-212 requires that notice be given to all persons considered interested parties and to the current occupant of property that may be lost to a tax deed. The notice may be made as follows:

NOTICE THAT A TAX DEED MAY BE ISSUED

TO:.....

(Name) (Address, when unknown, so state)

Pursuant to section 15-18-212, Montana Code Annotated, NOTICE IS HEREBY GIVEN:

1. As a result of a property tax delinquency, a property tax lien exists on the following described real property in which you may have an interest:

.....  
.....

2. The property taxes became delinquent on .....

3. The property tax lien was attached as the result of a tax *lien* sale held on .....

4. The property tax lien was purchased at a tax *lien* sale on ..... by .....  
(Name) ..... (Address).

5. The lien was subsequently assigned to .....

6. As of the date of this notice, the amount of tax due is:

- TAXES: .....
- PENALTY: .....
- INTEREST: .....
- COST: .....
- TOTAL: .....

7. For the property tax lien to be liquidated, the total amount listed in paragraph 6 must be paid by ....., which is the date that the redemption period expires or expired.

8. If all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to ....., which is the date the redemption period expires, or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date that the redemption period expires or on the date the county treasurer will otherwise issue a tax deed.

9. The business address and telephone number of the county treasurer who is responsible for issuing the tax deed is: ..... County Treasurer, ..... (Address), ..... (Telephone).

FURTHER NOTICE FOR THOSE PERSONS LISTED ABOVE WHOSE ADDRESSES ARE UNKNOWN:

- 1. The address of the interested party is unknown.
- 2. The published notice meets the legal requirements for notice of a pending tax deed issuance.
- 3. The interested party's rights in the property may be in jeopardy.

DATED at ..... this ..... (Date).

.....  
Signature”

**Section 26.** Section 15-18-217, MCA, is amended to read:

**“15-18-217. Form of cancellation.** The notice of cancellation required by 15-18-212 of a tax lien as evidenced by a tax ~~sale~~ *lien sale* certificate or assignment may be made as follows:

I, ....., the treasurer of ..... County, certify that ..... (name of the purchaser or the purchaser’s agent or assignee) of ..... (address), purchased a tax lien ..... (tax ~~sale~~ *lien sale* certificate no. or tax lien assignment no.) on property owned by ..... (name of owner of record). See legal description attached as exhibit “A”, Tax Receipt No. .... on .... (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to ..... (name of purchaser or the purchaser’s agent or assignee) that the tax lien will be canceled if the purchaser does not comply with provisions of 15-18-212 within 120 days from ..... (date of mailing of certified letter).

I further certify that the treasurer of ..... County has no record of notice by the owner of the tax lien in accordance with 15-18-212(7).

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this ..... (date).

.....  
Name of County Treasurer”

**Section 27.** Section 15-18-218, MCA, is amended to read:

**“15-18-218. Charge not allowed for filings or recordings made by county treasurer.** The county clerk and recorder may not impose a charge for tax lien assignments, tax ~~sale~~ *lien sale* certificates, certificates of redemption, or any other form that the county treasurer is required to file or record with the county clerk and recorder.”

**Section 28.** Section 39-3-501, MCA, is amended to read:

**“39-3-501. Certain laws extended to certain employers in mineral and oil industry.** For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except ~~such~~ persons, firms, partnerships, or corporations ~~as~~ *that* have a free and unencumbered title to not less than one-half the fee of the property being



worked. For this purpose, an outstanding unpaid or unredeemed tax ~~sale~~ *lien sale* certificate is not considered an encumbrance.”

**Section 29.** Section 85-7-2136, MCA, is amended to read:

**“85-7-2136. Collection of taxes or assessment.** (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer ~~shall~~ *must* receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and *a tax lien sale* certificate ~~of sale~~ is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax *lien* sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid.”

**Section 30.** Section 85-7-2152, MCA, is amended to read:

**“85-7-2152. Proceeds of sale.** Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of ~~such~~ *the* district is sold by the treasurer of the county where ~~such~~ *the* land is situated in the manner provided by law for the sale of lands for delinquent taxes for state

and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which ~~such~~ *the* lands are sold, the county treasurer making ~~such the~~ sale or sales shall place to the credit of the proper funds of ~~such the~~ irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty ~~thereon on the proceeds~~ as provided for by the general laws relating to delinquent taxes for state and county purposes., ~~and whenever~~ *When* any ~~such of the~~ lands are struck off at ~~such the tax lien~~ sale to the county where they are situated pursuant to the provisions of 15-17-214, the county treasurer of the county ~~must shall~~, upon the issuance of the *tax lien sale* certificate of ~~tax sale~~ to the county, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises ~~so that were~~ sold, inclusive of the interest and penalty. ~~thereon, which~~ *The* certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises ~~so that were~~ struck off to the county at the *tax lien* sale., ~~and after~~ *After* the issuance of the certificate, the sum named ~~therein in the certificate~~ and the taxes and assessments of the district evidenced ~~thereby by the certificate~~ shall ~~bear bear~~ interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described ~~therein in the certificate~~ in the manner provided for by law., ~~and duplicates~~ *Duplicates* of ~~such~~ certificates ~~so~~ issued to the irrigation district shall ~~must~~ be filed in the office of the county clerk and county treasurer of the county with the *tax lien sale* certificate of ~~tax sale~~ of the lands and premises.”

**Section 31.** Section 85-7-2157, MCA, is amended to read:

**“85-7-2157. Purchase of lands by district — revolving fund, credits, and expenditures.** (1) At all sales of all lands for delinquent taxes ~~where when~~ all or a portion of ~~such the~~ delinquent taxes are taxes and assessments levied and assessed by ~~any an~~ irrigation district against the lands to be sold, the commissioners of ~~such the~~ irrigation district, if there ~~be is~~ no other bidder for ~~such the~~ land at ~~such the tax lien~~ sale, may bid ~~therefor on the land~~ for the total amount of all delinquent taxes and assessments, penalty, and interest against ~~such the~~ land., ~~and thereupon~~ *If the commissioners are the only bidder*, the county treasurer shall strike off ~~said the~~ lands to ~~such the~~ irrigation district and issue *tax lien sale* certificates of ~~tax sale~~ to ~~said the~~ irrigation district the same as ~~such tax lien sale~~ certificates of ~~tax sales~~ are issued to other purchasers. For the purpose of paying ~~such the~~ taxes, assessments, interest, and penalties, the commissioners of ~~such the~~ irrigation district shall ~~have the power and authority to may~~ create by resolution a fund to be known and designated as the revolving fund for the purchase of *tax lien sale* certificates and titles. ~~and to~~ *The commissioners may* provide funds for ~~such the~~ revolving fund by levy, bond issue, or otherwise. The district may pay ~~such the~~ taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against ~~such the~~ revolving fund, ~~provided that there shall be if there is~~ sufficient money in ~~such the~~ fund to ~~pay same in full upon demand~~.

(2) When taxes are paid by the district as provided in this part, the county treasurer shall distribute that portion of ~~said the~~ tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. However, if the board of commissioners of the irrigation district shall file with the county treasurer a certified copy of *the* resolution passed by ~~such the~~

commissioners requesting nondistribution by the county treasurer of the portion of the tax belonging to the district, the county treasurer ~~shall~~ *may* not distribute that portion of ~~said the~~ tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment, but the total amount due the irrigation district ~~shall~~ *must* be credited by ~~him~~ *the treasurer* to the revolving fund ~~above specified~~. ~~In such event,~~ *If money is credited to the revolving fund,* at the time of the sale by the district of the tax ~~sale lien sale~~ certificate or of the property obtained through ~~such the~~ certificate, ~~such the~~ funds ~~as that~~ are realized from ~~such the~~ sale must be deposited with the county treasurer, together with the rentals received from the property, and ~~he~~ *the treasurer* shall credit the proceeds of ~~such the~~ redemption sale or rental pro rata to the several funds of the district in accordance with the original levy or assessment.

(3) At the time of redemption or of the sale by the district of the tax ~~sale lien sale~~ certificate or of the property obtained through ~~such the~~ certificate, ~~such the~~ funds ~~as that~~ are realized must be deposited with the county treasurer, together with rentals received from the property. ~~He~~ *The county treasurer* shall credit the proceeds of ~~such the~~ redemption, sale, or rentals to the ~~above specified~~ revolving fund to ~~such the~~ extent ~~as may be required,~~ ~~with the credit provided for above,~~ to reimburse ~~said the~~ revolving fund in full; ~~if~~ *If* the sum realized permits, ~~the~~ *overplus,* ~~if any excess,~~ ~~to~~ *must* be credited to the several funds of the district in accordance with the original levy and assessment. ~~No expenditures shall~~ *Expenditures may not* be made from the revolving fund except for the purpose ~~as herein specified,~~ ~~and when,~~ ~~by resolution of the~~ *as provided in this section.* The board of irrigation district commissioners ~~may,~~ *by resolution,* ~~such when the fund shall be deemed becomes~~ inactive, ~~the balance remaining in said fund shall be transferred~~ *transfer the balance* to a sinking fund to ~~be applied upon~~ *pay* any indebtedness ~~which may have that had~~ been incurred by the district by reason of the creation of ~~such the~~ revolving fund, ~~if any there may be.~~

**Section 32.** Section 85-7-2158, MCA, is amended to read:

**“85-7-2158. Purchase of lands by district — tax lien sale certificates and payment.** (1) Any irrigation district may:

(a) purchase the *tax lien sale* certificate ~~of tax sale~~ issued to any county for lands sold at a tax *lien* sale against which any of its taxes and assessments are delinquent; or

(b) ~~if a deed therefor~~ has issued to the county, purchase ~~such the~~ lands from the county by paying all state, county, city, school district, and other delinquent taxes, together with penalty, interest, and costs of publication and sale to the county treasurer of the county making the sale.

(2) ~~Such~~ *The* payment ~~shall~~ *must* be made by the commissioners of ~~such the~~ district ~~by~~ issuing and delivering to the county treasurer a warrant drawn against the revolving fund of ~~said the~~ district; ~~provided there shall be if there is~~ sufficient money in ~~said the~~ fund to pay ~~same the~~ *warrant* in full upon demand. ~~Thereupon,~~ ~~such treasurer~~ *The county treasurer* shall then assign ~~such the~~ *tax lien sale* certificate ~~of tax sale~~ to ~~such the~~ irrigation district ~~as in the case of the purchase thereof by any other person,~~ or the commissioners of the county shall convey ~~such the~~ lands to ~~said the~~ district ~~in case if the tax deed therefor has been~~ issued to the county.”

**Section 33.** Section 85-7-2159, MCA, is amended to read:

**“85-7-2159. Issuance of tax deed.** ~~When~~ *If* there has been no redemption of the lands sold at a tax *lien* sale to an irrigation district or by any other person or *no redemption* of the lands struck off to the county for which a *tax lien sale* certificate of sale has been assigned to an irrigation district or any other person ~~in the manner and within the time allowed as provided by law~~ for the redemption of lands from tax *lien* sales, the county treasurer of the county within which the lands are situated shall issue a tax deed for the lands to the irrigation district or *any other holder of a tax lien sale* certificate of sale.”

**Section 34.** Section 85-7-2162, MCA, is amended to read:

**“85-7-2162. Powers of district commissioners to acquire and manage tax *lien* sale lands.** (1) In addition to the powers ~~heretofore granted to~~ of irrigation districts, the commissioners of every irrigation district established and organized under and by virtue of the laws of the state of Montana ~~shall have power to~~ *may*:

(a) purchase lands within their respective districts ~~heretofore that had been~~ sold and conveyed to the county for nonpayment of taxes and assessments, purchase *tax lien sale* certificates of tax sales of ~~such the~~ land when struck off to the county, ~~and take title thereto to the land~~ for their district;

(b) own, manage, operate, lease, sell, and dispose of the ~~same land~~ for the use and benefit of their respective districts ~~upon such terms as shall, in the judgment of the board of commissioners of such irrigation district, be deemed most advantageous to the district~~;

(c) sue and be sued in reference to ~~said the~~ lands in the name of their respective irrigation districts; ~~and~~ commence, maintain, and prosecute suits to quiet title to ~~said the~~ lands and any ~~and all~~ other suits in equity or actions at law with reference ~~thereto to the lands~~, the same as ~~might be done by~~ any other individual or corporate owners of ~~such the~~ lands; and

(d) do any ~~and all~~ other acts or things necessary or beneficial for their respective districts in connection with ~~such the~~ lands.

(2) ~~Such The~~ lands ~~shall must~~ be ~~first~~ offered for sale at public sale, and the commissioners may reject any ~~and all~~ bids ~~thereon on the land~~; if, in their judgment, ~~such the~~ bids are insufficient. ~~No such The~~ lands ~~shall may not~~ be sold at private sale at a price less than the highest bid ~~therefor made~~ at the public sale at which ~~such the~~ lands ~~are were~~ offered for sale; ~~and if no~~ *If* a bid is ~~not~~ received for ~~said the~~ land when ~~said the~~ land is offered at public sale, the commissioners may then sell the ~~same land~~ in ~~such the~~ manner, ~~and at such the~~ price, and upon ~~such the~~ terms as ~~in their judgment shall be for the best interests of said district that they choose~~.

(3) The board of commissioners of any irrigation district ~~shall be and they are hereby authorized and empowered to do any and all things may do what is~~ necessary to carry out the provisions and intentions of 85-7-2157 through 85-7-2164.”

**Section 35.** Section 85-7-2163, MCA, is amended to read:

**“85-7-2163. Granting of tax deed.** The holder of the *tax lien sale* certificate of tax sale must be granted a tax deed by the county treasurer in the manner and form provided by Title 15, chapter 18.”

**Section 36.** Section 85-8-601, MCA, is amended to read:

**“85-8-601. Certification and collection of district taxes.** (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the

commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and *the tax lien sale certificate of sale* is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax *lien sale*, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid.”

Approved March 30, 2007

## CHAPTER NO. 111

[HB 662]

AN ACT CLARIFYING WHEN AN EXEMPTION FROM REVIEW UNDER LAWS GOVERNING SANITATION IN SUBDIVISIONS MAY APPLY TO A REMAINDER OF AN ORIGINAL TRACT; AMENDING SECTION 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-4-125, MCA, is amended to read:

**“76-4-125. Review of subdivision application — land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in

76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system ~~that was constructed~~ *serving a discharge source that was in existence* prior to April 29, 1993, and, if required when installed, *the system* was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

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

Approved March 30, 2007

## CHAPTER NO. 112

[SB 21]

### AN ACT AUTHORIZING COUNTIES TO ESTABLISH AND FUND VETERANS' CEMETERIES.

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

**Section 1. Veterans' cemetery.** (1) Pursuant to Article II, section 35, of the Montana constitution, a county may provide for the construction, maintenance, and administration of a veterans' cemetery, set the standards by which the cemetery must be constructed and maintained, and determine qualifications for burial in the cemetery.

(2) Subject to 15-10-420, to fund the cemetery, the county may impose a property tax levy, accept gifts, grants, or donations, and receive allowances and collect charges authorized by state or federal law regarding burial of a veteran or a veteran's spouse.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 35, part 22, and the provisions of Title 7, chapter 35, part 22, apply to [section 1].

Approved March 30, 2007

## CHAPTER NO. 113

[SB 88]

### AN ACT EXTENDING INDEFINITELY THE ALLOCATION OF LODGING FACILITY USE TAX TO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REPEALING SECTION 3, CHAPTER 469, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** Section 3, Chapter 469, Laws of 2001, is repealed.

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

Approved March 30, 2007

## CHAPTER NO. 114

[SB 237]

### AN ACT ALLOWING PNEUMATIC SNOW TIRES WITH RETRACTABLE STUDS TO BE USED YEAR ROUND; AND AMENDING SECTION 61-9-406, MCA.

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

**Section 1.** Section 61-9-406, MCA, is amended to read:

**“61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment — definitions.** (1) A solid rubber tire on a vehicle must have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike, or other protuberance of a material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, that may not protrude more than one-sixteenth of an inch beyond the tire tread or that are clearly marked by the manufacturer on the sidewall "all season m&s" (or "all season mud and snow"), upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. *The Except as provided in subsection (4), the use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.*

*(4) Pneumatic tires that feature an embedded block, stud, flange, cleat, spike, or other protuberance that is retractable may be used at any time of the year. However, the protuberance may not be engaged or extended other than between October 1 and May 31 of each year on roads that do not contain ice or snow.*

(4)(5) The department of transportation and local authorities, as defined in 61-8-102, in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

(5)(6) If the department of transportation determines at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction equipment for vehicles in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels.

(6)(7) Equipment required by subsection (5)(b) (6)(b) or (5)(e) (6)(c) must conform to rules established by the department of justice.

(7)(8) The department of transportation shall place and maintain signs and other traffic control devices on a highway designated under subsection (5) (6) that indicate the tire, tire chain, or traction equipment recommendation or requirement determined for vehicles. The signs or traffic control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of transportation determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to tires on driver wheels of one axle, as defined in 61-10-104, of a vehicle, including embedded tires. The



signs or traffic control devices may differentiate in recommendations or requirements for four-wheel-drive vehicles in gear.

(8)(9) As used in this section:

(a) “metal tire” means a tire the surface of which in contact with the highway is wholly or partly metal or other hard, nonresilient material; and

(b) “pneumatic tire” means a tire in which compressed air or nitrogen is designed to support the load.”

Approved March 30, 2007

## CHAPTER NO. 115

[HB 664]

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER CONTROLLED BURNING AND LOGGING AS METHODS TO ADDRESS FOREST INSECT PEST INFESTATIONS OR TREE DISEASES; AMENDING SECTION 76-13-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the mountain pine beetle poses a serious threat to the health of Montana forests and the economic benefits and recreational opportunities that those forests provide; and

WHEREAS, years of fire suppression and drought have made Montana forests especially susceptible to mountain pine beetles;

WHEREAS, in 2006, the mountain pine beetle infected about 881,000 acres in western Montana and northern Idaho, killing more than 2.4 million trees; and

WHEREAS, controlled burning or logging may help control beetle infestations as well as reduce wildfire danger created by large stands of trees killed by beetles; and

WHEREAS, students at Butte High School have studied beetle infestations and concluded that Montana should consider controlled burning or logging to attack mountain pine beetles and preserve the state’s forests.

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

**Section 1.** Section 76-13-304, MCA, is amended to read:

**“76-13-304. Suppression and eradication of infestation.** (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

(3) *The department may consider controlled burning or logging as methods to suppress or eradicate forest insect pest infestation or forest tree disease.”*

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

Approved April 2, 2007

**CHAPTER NO. 116**

[SB 45]

AN ACT REVISING THE PROVISIONS FOR BEHAVIORAL HEALTH INPATIENT FACILITIES; PROVIDING FOR LICENSURE; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-21-102, 53-21-129, 53-21-193, AND 53-21-194, MCA.

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

**Section 1.** Section 53-21-102, MCA, is amended to read:

**“53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) “Abuse” means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) “Behavioral health inpatient facility” means a ~~licensed~~ facility *or a distinct part of a facility* of 16 beds or less ~~designated~~ *licensed* by the department that:

~~(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that~~ is capable of providing *secure*, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; ~~and~~

~~(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.~~

(3) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(4) “Commitment” means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) “Court” means any district court of the state of Montana.

(6) “Department” means the department of public health and human services provided for in 2-15-2201.

(7) “Emergency situation” means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) “Friend of respondent” means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person’s conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the

respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(17) “Reasonable medical certainty” means reasonable certainty as judged by the standards of a professional person.

(18) “Respondent” means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) “State hospital” means the Montana state hospital.”

**Section 2.** Section 53-21-129, MCA, is amended to read:

**“53-21-129. Emergency situation — petition — detention.** (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent’s residence. In either case, the professional person shall file a report with the court explaining the professional person’s actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the ~~Montana state hospital~~ *professional person* determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention *and a bed is available*, ~~if the county attorney~~ shall direct the person to the appropriate facility to which the person must be transported for emergency detention.”

**Section 3.** Section 53-21-193, MCA, is amended to read:

**“53-21-193. Commitment to behavioral health inpatient facilities — preference — voluntary treatment.** (1) If a respondent is committed to the state hospital under 53-21-127 or *if a person in an emergency situation requires*

detention under 53-21-129 and a bed is available at a behavioral health inpatient facility, the ~~Montana state hospital shall direct the professional person shall inform the county attorney who shall inform the person~~ who is responsible for transporting the individual *as to the appropriate facility to which the person shall transport the individual is to be transported* for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, the facility must be notified and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of commitment in accordance with criteria established by the department by rule pursuant to 53-21-194. A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(4) The court may not order commitment of the respondent or transfer of an individual to a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

(5) *If a bed is available, a behavioral health inpatient facility may admit a person for voluntary treatment.*"

**Section 4.** Section 53-21-194, MCA, is amended to read:

**"53-21-194. Department ~~contract with~~ licensure of behavioral health inpatient facilities — rulemaking authority — ~~rates and transfer criteria.~~** (1) The department may ~~contract with one or more license~~ behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title *or to persons seeking treatment voluntarily.*

(2) The department shall adopt rules:

(a) governing the ~~number, geographic distribution, capacity, and qualifications~~ *for licensure* of behavioral health inpatient facilities; and

(b) establishing criteria pursuant to subsection ~~(3)~~ (4) for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) *The rules for licensure must provide standards for the protection of the health and safety of persons committed to or detained in a behavioral health inpatient facility, including:*

(a) *requirements for medical stability;*

(b) *maximum length of stay;*

(c) *staffing levels and qualifications;*

(d) *building code classifications for occupancy; and*

(e) *security.*

~~(3)~~(4) The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals ~~and~~ or state hospital staff.

~~(4)~~(5) The department shall provide notice to the district courts *and professional persons* of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer."

Approved April 3, 2007

## CHAPTER NO. 117

[SB 108]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; REQUIRING INSURERS TO NOTIFY THE DEPARTMENT OF LABOR AND INDUSTRY OF CHANGES IN THIRD-PARTY CLAIMS EXAMINERS; DEPOSITING PENALTY FEES FOR FAILURE TO NOTIFY IN THE WORKERS' COMPENSATION ADMINISTRATION FUND; MODIFYING DISPUTE RESOLUTION PROCEDURES PERTAINING TO INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING ANNUAL FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED BY RULE; REVISING REIMBURSEMENT AMOUNTS FOR DOMICILIARY CARE PROVIDED BY A FAMILY MEMBER; PROVIDING THAT INTEREST ACCRUES ON AMOUNTS NOT PAID FROM SECURITY DEPOSITS WHEN PAYMENT IS DEMANDED BY THE DEPARTMENT; CLARIFYING THAT THE PENALTY FOR FAILURE TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT MAY BE ASSESSED FOR EACH INSTANCE OF FAILURE TO REPORT; PROVIDING GUIDELINES FOR DETERMINING WHEN AN INSURER IS IMPAIRED; REQUIRING SECURITY FROM PLAN NO. 2 INSURERS TO COVER POTENTIAL LIABILITY; AMENDING SECTIONS 39-71-107, 39-71-201, 39-71-415, 39-71-417, 39-71-418, 39-71-704, 39-71-727, 39-71-1107, 39-71-2106, 39-71-2201, 39-71-2204, 39-71-2205, AND 39-71-2337, MCA; REPEALING SECTION 39-71-2208, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-71-107, MCA, is amended to read:

**"39-71-107. Insurers to act promptly on claims — in-state claims examiners.** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located

in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) *An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.*

(b) *The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.*

(4)(5) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(5)(6) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(6)(7) The department may adopt rules to implement this section.

(7)(8) (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

**Section 2.** Section 39-71-201, MCA, is amended to read:

**"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503.

The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the



annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the

department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

**Section 3.** Section 39-71-415, MCA, is amended to read:

**"39-71-415. Procedure for resolving disputes regarding independent contractor status.** ~~(1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee, any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.~~

(2)(1) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, either party may, after mediation pursuant to department rules, petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3)(2) (a) A dispute ~~between involving~~ an employer, a worker, ~~and~~ or the department ~~and~~ involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution.

(b) (i) A decision of the independent contractor central unit is final unless a party dissatisfied with the decision ~~appeals by filing a petition with the workers' compensation court~~ requests mediation pursuant to department rules within ~~30~~ 15 days of the mailing of the decision by the independent contractor central unit.

(ii) At the conclusion of the mediation process, the mediator shall issue a report summarizing the status of the proceeding and shall mail a copy of the report to the parties.

(c) If after mediation the parties have not resolved their dispute concerning a worker's status as an independent contractor or an employee, a party may appeal the decision of the independent contractor central unit by filing a petition with the workers' compensation court within 30 days of the mailing of the mediator's report.

(d) An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this ~~part~~ subsection (2) is a new proceeding."

**Section 4.** Section 39-71-417, MCA, is amended to read:

**"39-71-417. Independent contractor certification.** (1) (a) A person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(a) the applicant's name and address;

(b) the applicant's social security number;

(c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the ~~department~~ *department's independent contractor central unit* denies an application for an independent contractor exemption certificate, the applicant may contest the denial by ~~petitioning the workers' compensation court within 30 days of the mailing of the denial that decision as provided in 39-71-415(2).~~

**Section 5.** Section 39-71-418, MCA, is amended to read:

**“39-71-418. Suspension or revocation of independent contractor exemption certificate.** (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) provided misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; or

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder’s certificate.

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder’s waiver of the rights and benefits of the Workers’ Compensation Act for the period prior to notice to the hiring agent by the department of the department’s decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the ~~department~~ *department’s independent contractor central unit* to suspend or revoke an independent contractor exemption certificate may be ~~appealed~~ *contested* in the same manner as provided in ~~39-71-417(9) for denial of an application for an independent contractor exemption certificate 39-71-415(2).~~”

**Section 6.** Section 39-71-704, MCA, is amended to read:

**“39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department.

Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services ~~not provided at a hospital~~ that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. *Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by the hospital. The rate must be adjusted by the annual percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.*

(3) (a) *The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the utilization and treatment guidelines established by the department are correct medical treatment for the injured worker.*

(b) *An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer.*

(c) *The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.*

~~(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.~~

~~(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:~~

~~(i) 69% of the hospital's January 1, 1997, usual and customary charges; or~~

~~(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.~~

~~(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.~~

~~(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.~~

~~(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.~~

~~(f)(4) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.~~

~~(g) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. Fees paid to a licensed medical assistance facility or critical access hospital are not subject to the limitation provided in subsection (4).~~

*(5) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. Fees paid to a licensed medical assistance facility or critical access hospital are not subject to the limitation provided in subsection (6).*

(4)(6) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

~~(5)(7) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.~~

~~(6)(8) Disputes After mediation pursuant to department rules, disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.~~

(7)(9) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (7) (9), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

- (i) a treating physician;
- (ii) a physical therapist;
- (iii) a psychologist; or
- (iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) (9)(a) if the visit is for treatment requested by an insurer."

**Section 7.** Section 39-71-727, MCA, is amended to read:

**"39-71-727. Payment for prescription drugs — limitations.** (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) Reimbursement rates payable by an insurer are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not



to exceed \$5.50 per product. *The department shall establish annually a schedule of fees for prescription drugs.*

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

~~(7) For purposes of this section, average wholesale prices must be updated weekly.~~

~~(8)(7) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as meanings provided in 37-7-502.~~

~~(9)(8) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.~~

~~(10)(9) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."~~

**Section 8.** Section 39-71-1107, MCA, is amended to read:

**"39-71-1107. Domiciliary care — requirements — evaluation.** (1) Reasonable domiciliary care must be provided by the insurer:

(a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;

(b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;

(c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;

(d) when the services rendered are of the type beyond the scope of normal household duties; and

(e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.

(2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.

(3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the current fiscal year for care in a nursing home. The insurer is not responsible for respite care.

(4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the ~~prevailing hourly wage, and the hourly mean wage by area for home health aides, as published by the department in the most recent edition of the Montana Informational Wage Rates by Occupation and adopted annually by the department prior to January 1.~~ The insurer is not liable for more than 8 hours of care ~~per each day at the rate in effect at the time that the services are rendered."~~

**Section 9.** Section 39-71-2106, MCA, is amended to read:

**“39-71-2106. Requiring security of employer.** (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. The security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and the Montana self-insurers guaranty fund. For the first 3 years of operating as a self-insured employer, the employer’s security deposit must be the greater of:

(i) \$250,000; or

(ii) an average of the workers’ compensation liabilities incurred by the employer in Montana for the first 3 of the last 4 completed calendar years.

(b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of ability to pay the benefits provided by this chapter.

(c) The department may, with the concurrence of the Montana self-insurers guaranty fund, reduce the amount of the security deposit if the evidence indicates that the full amount of the deposit is unnecessary.

(2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require an employer to give security in addition to the security deposit described in subsection (1) if:

(i) the department, with the concurrence of the Montana self-insurers guaranty fund, determines that the employer lacks the ability to pay the benefits that are expected to be paid by the employer under the terms and conditions of this chapter that are chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to pay the benefits provided under the terms and conditions of this chapter that the employer may accrue during the year.

(3) (a) The security deposit provided for in subsection (1) must be deposited with the department. The security deposit may consist of:

(i) a bond executed to the department with a surety. The security deposit must state that the employer will pay or cause to be paid to employees the amount for which the employer was given permission under 39-71-2103 and for which the employer is liable under the terms and conditions of this chapter during the year.

(ii) any Montana state, county, municipal, or school district bonds that the department and the Montana self-insurers guaranty fund consider solvent; or

(iii) other security deposits allowed in subsection (1)(a).

(b) Each security deposit and the character and amount of the security deposit are subject to approval, revision, or change considered necessary by the department and the Montana self-insurers guaranty fund.

(c) Upon proof of the final payment of the liability for which the security deposit is given, the security deposit or any remainder of the security deposit must be returned to the depositor.

(d) *Payment must be made from the security deposit within 30 days of a demand by the department for payment. If payment is not made within 30 days by the obligor on the security deposit, the obligor is liable to the department for interest at the annual rate of 10% on the amount unpaid.*

(4) The department is liable for the value and safekeeping of all security deposits and shall, at any time, upon demand of the depositor, account for the security deposits.”

**Section 10.** Section 39-71-2201, MCA, is amended to read:

**“39-71-2201. Election to be bound by plan — captive reciprocal insurers.** (1) Any employer except those specified in 39-71-403 may, by filing his an election to become bound by compensation plan No. 2, insure his the employer’s liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his the election on the form and in the manner prescribed by the department.

(3) *A captive reciprocal insurer established by or on behalf of an employer or a group of employers is considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may not be a member of an insurance guaranty association or guaranty fund.”*

**Section 11.** Section 39-71-2204, MCA, is amended to read:

**“39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the a policy of workers’ compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department. Beginning January 1, 2006, notice Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers’ compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the insurer’s notice of coverage.

(3) The department may, in its discretion, assess a penalty of ~~no~~ not more than \$200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1). *The penalty may be assessed for each policy that is not reported to the department in a timely manner.”*

**Section 12.** Section 39-71-2205, MCA, is amended to read:

**“39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by

written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured. ~~Beginning January 1, 2006, notice~~ Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1). *The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.*

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

**Section 13.** Section 39-71-2337, MCA, is amended to read:

**"39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure.** (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires. ~~Beginning January 1, 2006, notice~~ Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund's notice of coverage.

(3) The department may assess a penalty of ~~no~~ not more than \$200 against the state fund if, ~~as a general business practice,~~ the state fund does not comply with the 30-day notice requirement. *The penalty may be assessed for each policy that is not reported to the department in a timely manner."*

**Section 14. Claim summary and actuarial documentation for impaired insurer.** (1) An insurer becomes impaired if the insurer:

(a) becomes insolvent;

(b) is placed in receivership or administration;

(c) declares bankruptcy; or

(d) seeks protection from its creditors.

(2) An impaired insurer shall, within 30 days of the insurer becoming impaired, furnish the department with a claim summary and actuary information relevant to each claim for which the insurer may have future liability.

**Section 15. Security deposit to ensure payment of liability of plan No. 2 insurer.** (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

- (a) becomes insolvent;
- (b) is placed in receivership;
- (c) declares bankruptcy;
- (d) seeks protection from its creditors; or
- (e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

(2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from \$25,000 to \$250,000. The security deposit must be posted in the form of:

- (a) a certificate of deposit;
- (b) a United States treasury note; or
- (c) an irrevocable letter of credit.

(3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

(4) (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

(b) Any earnings made by the security deposit accrue to the security deposit.

(c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

(5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

(a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;

(b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

(c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

(6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.

(7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section.

**Section 16. Repealer.** Section 39-71-2208, MCA, is repealed.

**Section 17. Codification instruction.** [Sections 14 and 15] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 14 and 15].

**Section 18. Effective date.** [This act] is effective July 1, 2007.

Approved April 3, 2007

## CHAPTER NO. 118

[SB 319]

AN ACT ESTABLISHING, WITH RESPECT TO REAL ESTATE TRANSACTIONS, WHEN A SELLER AGENT OR BUYER AGENT MAY REPRESENT MORE THAN ONE SELLER OR MORE THAN ONE BUYER; MODIFYING CONFIDENTIALITY REQUIREMENTS OWED TO A PRINCIPAL UPON TERMINATION OF THE AGENCY RELATIONSHIP; AMENDING SECTION 37-51-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-51-313, MCA, is amended to read:

**“37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms “buyer agent”, “dual agent” and “seller agent”, as used in this chapter, are defined in 37-51-102 and are not related to the term “agent” as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, *except that a seller agent, after written disclosure to the seller and with the seller’s written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller’s property without breaching any obligation to the seller;*

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent *with a buyer or another seller;*

(d) safeguard the seller’s confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller’s objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent’s possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, *except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or similar properties to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer*;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent *with another buyer or a seller*;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section, except as follows: *that*

~~(a)~~ a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; ~~and~~.

~~(b)~~(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

~~(i)~~(a) the fact that the buyer is willing to pay more than the offered purchase price;

~~(ii)~~(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

~~(iii)~~(c) factors motivating either party to buy or sell; and

~~(iv)~~(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8)(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(9)(10) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

~~(10)~~(11) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

*(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;*

~~(iii)~~(iii) disclosure required by law or to prevent the commission of a crime;



(iii)(iv) the information being disclosed by someone other than the broker or salesperson; and

(iv)(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(11)(12) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

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

Approved April 3, 2007

## CHAPTER NO. 119

[SB 323]

AN ACT PROVIDING THAT A CERTIFICATE OF PUBLIC ADVANTAGE MAY NOT BE ISSUED FOR A TERM IN EXCESS OF 10 YEARS AND MUST TERMINATE NO LATER THAN 10 YEARS AFTER THE DATE OF ISSUANCE; REQUIRING A PRIOR CERTIFICATE HOLDER TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE FOR 2 YEARS FOLLOWING THE TERMINATION OF A CERTIFICATE OF PUBLIC ADVANTAGE; AMENDING SECTION 50-4-603, 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 50-4-603, MCA, is amended to read:

**"50-4-603. Certificate of public advantage — standards for certification — time for action by department — duration of certificate.**

(1) Parties to a cooperative agreement, merger, or consolidation may apply to the department for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed cooperative, merger, or consolidation agreement, a description of the scope of the cooperation, merger, or consolidation contemplated by the agreement, and the amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The department shall hold a public hearing on the application for a certificate before acting upon the application. The department may not issue a certificate unless the department finds that the agreement is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs. If the department denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the department not to issue the certificate. Parties to a void agreement may not implement or carry out the agreement. The parties to a void agreement may submit a new application for a certificate based upon a cooperative agreement, merger, or consolidation different from the original application.

(3) The department shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application or within one 90-day extension, which may be granted by the department upon a showing of good cause by the applicants. If the department does not issue a certificate within that time, the application is considered to have been denied. A certificate may be issued subject to terms and conditions, as the department may determine are appropriate, in order to best achieve lower health care costs or greater access to or quality of health care.

(4) Any amendment to a cooperative, merger, or consolidation agreement ~~and~~ or any material change in the operations or conduct of any party to a cooperative, merger, or consolidation agreement is considered to be a new agreement and may not take effect or occur until the department has issued a new certificate of public advantage approving the amendment or change.

(5) *A certificate of public advantage may not have a duration of more than 10 years from the date of issuance. Unless terminated sooner, a certificate of public advantage terminates on the date 10 years from the date of issuance. For 2 years immediately following the termination of a certificate of public advantage, the prior certificate holder shall, on an annual basis, report to the department information regarding:*

- (a) *quality of health care;*
- (b) *access to health care;*
- (c) *patient safety;*
- (d) *patient satisfaction;*
- (e) *health care service changes, additions, and deletions; and*
- (f) *cost comparisons based on similarly situated health care facilities.”*

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

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all certificates of public advantage issued prior to [the effective date of this act].

Approved April 3, 2007

## CHAPTER NO. 120

[HB 260]

AN ACT REVISING THE LAWS RELATING TO THE STUDENT REGENT; LIMITING THE STUDENT REGENT TO A 1-YEAR TERM; ALLOWING THE STUDENT REGENT TO BE REAPPOINTED IN THE SAME MANNER AS AN INITIAL APPOINTMENT; AMENDING SECTION 2-15-1508, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 2-15-1508, MCA, is amended to read:

**“2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy.** (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

- (a) Not more than four may be from one district provided for in 5-1-102.
- (b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is ~~determined by the governor and must be for not less than 1 year and not more than 4 years.~~ The term begins July 1 and ends June 30 ~~of the years designated by the governor.~~ *The student regent may be reappointed to succeeding terms subject to subsection (3)(b).* The provisions of ~~subsections (1)(a) and (1)(b) and (1)(b)~~ *subsections (1)(a) and (1)(b) and (1)(b)* do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment."

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 3. Effective date.** [This act] is effective July 1, 2007.

**Section 4. Applicability.** [This act] applies to student regents appointed after [the effective date of this act].

Approved April 4, 2007

## CHAPTER NO. 121

[HB 22]

AN ACT ELIMINATING A PROVISION FOR MAKING REIMBURSEMENTS TO LOCAL GOVERNMENTS FOR THE FEE IN LIEU OF TAX ON CERTAIN VEHICLES THAT ARE MADE UNDER ANOTHER SECTION OF LAW; AMENDING SECTION 17-7-502, MCA; REPEALING SECTION 15-1-113, 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 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; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; ~~15-1-113~~; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 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; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 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; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)”

**Section 2. Repealer.** Section 15-1-113, MCA, is repealed.

**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 reimbursement payments after December 31, 2001.

Approved April 5, 2007

**CHAPTER NO. 122**

[HB 64]

AN ACT REVISING THE DEFINITION OF “SERIOUSLY DEVELOPMENTALLY DISABLED” TO REMOVE TOTAL CARE LANGUAGE FOR THE PURPOSES OF COMMITMENT TO RESIDENTIAL FACILITIES; AND AMENDING SECTION 53-20-102, MCA.

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

**Section 1.** Section 53-20-102, MCA, is amended to read:

**“53-20-102. Definitions.** As used in this part, the following definitions apply:

(1) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(2) “Community-based facilities” or “community-based services” means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(3) “Court” means a district court of the state of Montana.

(4) “Developmental disabilities professional” means a licensed psychologist, a licensed psychiatrist, or a person with a master’s degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(5) “Developmental disability” means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability.

(6) “Habilitation” means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person’s physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(7) “Individual treatment planning team” means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(8) “Next of kin” includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) “Qualified mental retardation professional” means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) “Resident” means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) cannot be safely and effectively habilitated in community-based services because of:

- (i) behaviors that pose an imminent risk of serious harm to self or others; ~~or~~
- (ii) ~~self-help deficits so severe as to require total care.~~"

Approved April 5, 2007

## CHAPTER NO. 123

[HB 98]

AN ACT ESTABLISHING A CHILDREN'S SYSTEM OF CARE ACCOUNT TO REDUCE OUT-OF-HOME PLACEMENTS OF HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; AUTHORIZING USE OF STATE FUNDS APPROPRIATED FOR MEDICAID SERVICES; REQUIRING A REPORT; AMENDING SECTIONS 52-2-301 AND 52-2-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Children's system of care account.** (1) There is a children's system of care account in the state special revenue fund to the credit of the department. The fund must be used for the purpose of administering and delivering services to high-risk children with multiagency service needs and to provide for the children's care, protection, and mental, social, and physical development.

(2) The children's system of care account must consist of funds:

- (a) transferred, to the extent possible within existing resources, by the agencies named in 52-2-303 from their agency appropriation;
- (b) designated by the legislature; or
- (c) received for the account from any other source.

(3) The department shall use funds from the children's system of care account to reimburse in-state or community-based providers of services for services that allow high-risk children with multiagency service needs to be

placed or to remain in the least restrictive and most appropriate setting, to the extent that the services are not eligible for reimbursement from another source.

**Section 2.** Section 52-2-301, MCA, is amended to read:

**“52-2-301. State policy.** The legislature declares that it is the policy of this state:

(1) to provide for and encourage the development of a stable system of care, including quality education, treatment, and services for the high-risk children of this state with multiagency service needs, to the extent that funds are available;

(2) to serve high-risk children with multiagency service needs either in their homes or in the least restrictive and most appropriate setting for their needs in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development;

(3) to serve high-risk children with multiagency service needs within their home, community, region, and state, whenever possible, and to use out-of-state providers as a last resort;

(4) to provide integrated services to high-risk children with multiagency service needs;

(5) to contain costs and reduce the use of high-cost, highly restrictive, out-of-home placements;

(6) to increase the capacity of communities to serve high-risk children with multiagency service needs in the least restrictive and most appropriate setting for their needs by promoting collaboration and cooperation among the agencies that provide services to children; ~~and~~

(7) to prioritize available resources for meeting the essential needs of high-risk children with multiagency service needs; *and*

(8) *to reduce out-of-home and out-of-community placements through a children’s system of care account to fund in-state and community-based services that meet the needs of high-risk children with multiagency service needs in the least restrictive and most appropriate setting possible.”*

**Section 3.** 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 [section 1]*. The rules must be adopted in cooperation with the committee established in 52-2-303.”

**Section 4. Use of medicaid funds — report.** (1) The department may use up to \$500,000 in state funds appropriated for medicaid services in each of state fiscal years 2008 and 2009 for the purposes of [section 1(3)].

(2) The department shall prepare a report to the children, families, health, and human services interim committee and the legislative finance committee no later than September 15, 2008, summarizing use of the children’s system of care account in the 2009 biennium.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 3, and the provisions of Title 52, chapter 2, apply to [section 1].

**Section 6. Effective date.** [This act] is effective July 1, 2007.

Approved April 5, 2007

**CHAPTER NO. 124**

[HB 105]

AN ACT REVISING LAWS ON TRAINING OF STATE AGENCY MANAGERS AND STATE EMPLOYEES ON TRIBAL ISSUES AND CONCERNS; REQUIRING TRAINING TO BE PROVIDED BY THE GOVERNOR'S OFFICE; AMENDING SECTION 2-15-143, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-143, MCA, is amended to read:

**"2-15-143. Training and consultation.** (1) At least once a year, the ~~department of justice~~ *governor's office* and a trainer selected by the tribal governments shall provide training ~~in Helena or a site mutually agreed upon in Helena or a site mutually agreed upon~~ to state agency managers and key employees who have regular communication with tribes on the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes.

(2) At least annually, the governor ~~may~~ *shall* convene ~~in Helena in Helena~~ a ~~full-day, working meeting at which the governor,~~ *with* representatives of state agencies; and tribal officials, including ~~chiefs and tribal presiding officers,~~ *shall to discuss:*

(a) ~~review the tribal concerns with rules and policies that directly impact tribal government and tribal populations that are proposed for adoption by the state agencies and recommend changes to the policies; and~~

(b) ~~discuss other issues of concern to either the state and or the tribes and formulate solutions; and~~

(c) *potential solutions to the concerns.*

(3) By ~~December~~ *August* 15 of each year, ~~a each~~ state agency shall submit to the governor a report ~~for the prior fiscal year describing to the governor and to each tribal government on~~ the activities of the state agency relating to tribal government and tribal populations. The report must include:

(a) ~~any rule or policy changes that the state agency adopted because of discussions under subsection (2)(a);~~

(b) ~~the name of the individual within the state agency who is responsible for implementing the policy;~~

(c) ~~the process that the state agency has established to identify the programs activities of the state agency that affect tribes;~~

(d) ~~the efforts of the state agency to promote communication and the government-to-government relationship between the state agency and the tribes; and~~

(e) ~~the efforts of the state agency to ensure tribal consultation and the use of American Indian data in the development and implementation of agency programs that directly affect tribes; and~~

(f) ~~a joint description by tribal program staff and state staff of the training required under subsection (1).~~

(4) *By September 15 of each year, the governor shall provide to each tribal government a report with an overview of all state and tribal activities for the*



*prior fiscal year, including a description of the training required under subsection (1). It is the intent of the legislature that this report be prepared within existing levels of funding.”*

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

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

Approved April 5, 2007

## CHAPTER NO. 125

[HB 118]

AN ACT ALLOWING THE DISPENSING OF CERTAIN CONTRACEPTIVES BY A REGISTERED NURSE EMPLOYED BY A FAMILY PLANNING CLINIC UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-2-104, 37-7-103, AND 50-31-307, MCA.

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

**Section 1.** Section 37-2-104, MCA, is amended to read:

**“37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged ~~oral~~ contraceptives, *other than mifepristone*, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician’s written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).”

**Section 2.** Section 37-7-103, MCA, is amended to read:

**“37-7-103. (Temporary) Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person’s practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives, *other than mifepristone*, if the dispensing is in accordance with a physician’s written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board’s requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6. (Terminates January 1, 2008—sec. 11, Ch. 60, L. 2003.)

**37-7-103. (Effective January 1, 2008) Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person’s practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and does not prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(4) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and

other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged ~~oral~~ contraceptives, *other than mifepristone*, if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

**Section 3.** Section 50-31-307, MCA, is amended to read:

**"50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged ~~oral~~ contraceptive *other than mifepristone*, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Approved April 5, 2007

## CHAPTER NO. 126

[HB 120]

AN ACT REVISING THE LAWS PERTAINING TO DAY-CARE PROVIDERS; EXEMPTING CERTAIN DAY-CARE PROVIDERS FROM MANDATORY ANNUAL UNANNOUNCED VISITS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REVISING THE PAYMENT RATE FOR

ELIGIBLE CHILDREN; AMENDING SECTIONS 52-2-713 AND 52-2-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 52-2-713, MCA, is amended to read:

**“52-2-713. Payments for eligible children.** The department shall pay a daily rate established by the department and appropriated by the legislature to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services.”

**Section 2.** Section 52-2-733, MCA, is amended to read:

**“52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor’s planning regions annually.

(4) (a) ~~The~~ *Subject to subsection (4)(b), the* department shall make annual unannounced visits to day-care centers *that are licensed on an annual basis.*

(b) *The department may make annual unannounced visits to day-care centers that have been granted 2-year or 3-year licenses under 52-2-721 or that have successfully passed inspections for 10 consecutive years.*

(5) Upon request of the department, the state fire prevention and investigation program of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee’s or registrant’s program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part.”

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

Approved April 5, 2007

## CHAPTER NO. 127

[HB 124]

AN ACT PROVIDING A TIME LIMIT ON CONTRACTS FOR STATE EMPLOYEE GROUP BENEFIT PLANS; AMENDING SECTIONS 2-18-811 AND 18-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-18-811, MCA, is amended to read:

**“2-18-811. General duties of the department.** The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans *for a period not to exceed 10 years*;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report ~~which~~ *that* describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans;

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part; and

(6) submit the report required in this section to the office of budget and program planning as a part of the information required by 17-7-111.”

**Section 2.** Section 18-4-313, MCA, is amended to read:

**“18-4-313. Contracts — terms, extensions, and time limits.** (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

(a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;

(b) a department of revenue liquor store contract governed by the term specified in 16-2-101; ~~and~~

(c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608.; *and*

(d) *the department of administration state employee group benefit plans contracts governed by the term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana university system group benefit plan.*

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.”

**Section 3. Effective date.** [This act] is effective July 1, 2007.

Approved April 5, 2007

## CHAPTER NO. 128

[HB 129]

AN ACT GENERALLY REVISING PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; CLARIFYING BENEFITS; CLARIFYING GUARANTEED ANNUAL BENEFIT ADJUSTMENTS IN REGARD TO A DISABILITY RETIREMENT BENEFIT AND IN REGARD TO NONRETROACTIVE PAYMENT; CLARIFYING SERVICE CREDIT PURCHASE FOR CERTAIN EMPLOYEES IN HIGHER EDUCATION; CLARIFYING THE ELIGIBILITY OF INDIVIDUALS APPOINTED TO CERTAIN ELECTED OFFICES TO PARTICIPATE IN THE RETIREMENT SYSTEMS; CLARIFYING THAT SERVICE CREDIT FOR RETIREMENT MAY ACCRUE FOR VARIOUS EMPLOYER ARRANGEMENTS AND CONTRACTS; PROSPECTIVELY ASSIGNING MOTOR VEHICLE INSPECTORS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM RATHER THAN TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; REVISING DEFINITIONS IN REGARD TO RETIREMENT SYSTEMS; ELIMINATING THE AD HOC COST-OF-LIVING INCREASE FOR SOME RETIREES OR MEMBERS' BENEFICIARIES OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-602, 19-2-715, 19-2-907, 19-2-908, 19-2-909, 19-3-401, 19-3-412, 19-3-510, 19-3-1105, 19-3-1106, 19-3-1202, 19-3-1203, 19-3-1204, 19-3-2111, 19-3-2112, 19-3-2113, 19-6-707, 19-7-101, 19-7-312, 19-7-1101, 19-8-301, 19-8-302, 19-9-1202, 19-9-1205, 19-9-1206, 19-17-102, 19-17-108, 19-17-401, 19-17-402, AND 19-17-502, MCA; AND REPEALING SECTION 19-8-1110, MCA.

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

**Section 1.** Section 19-2-602, MCA, is amended to read:

**“19-2-602. Refund of member’s contributions on termination of service.** (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member’s accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member’s accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of \$200 to ~~\$5,000~~ \$1,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law *or to a Roth IRA, provided for under 26 U.S.C. 408A*. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient.”

**Section 2.** Section 19-2-715, MCA, is amended to read:

**“19-2-715. Purchase of Montana public service.** (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service credit in the member’s retirement system all or any portion of the member’s previous service credit in the public employees’, judges’, highway patrol officers’, sheriffs’, game wardens’ and peace officers’, firefighters’ unified, or municipal police officers’ retirement system ~~to the extent that if the member either~~ has:

(i) received or is eligible to receive a refund of accumulated contributions; *or*

(ii) *become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.*

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member’s current retirement system, based on the system’s most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection ~~(1)(b)~~ (1)(c).

~~(b)(c)~~ (c) Upon receiving the member’s payment under subsection ~~(1)(a)~~ (1)(b), the board shall transfer from the member’s former retirement system to the member’s current retirement system an amount equal to the employer contributions made on compensation during the member’s former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member’s current retirement system according to the system’s most recent actuarial valuation.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member’s former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member’s current retirement system, as determined by the board, based on the system’s most recent actuarial valuation.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403.”

**Section 3.** Section 19-2-907, MCA, is amended to read:

**“19-2-907. Alternate payees — family law orders — rulemaking.** (1) A participant in a retirement system may have the participant’s rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) “family law order” means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental

support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be ~~apportioned~~ *paid* to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. *The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death.* Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be ~~apportioned~~ *paid* to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be ~~apportioned~~ *paid* as a percentage only if existing benefit payments are ~~apportioned~~ *paid* as a percentage. The adjustments must be ~~apportioned~~ *paid* as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount ~~apportioned~~ *paid* may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.



(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments ~~apportioned~~ *paid* from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

**Section 4.** Section 19-2-908, MCA, is amended to read:

**"19-2-908. Time of commencement of benefit — rulemaking.** (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) ~~The~~ *Subject to the provisions of subsection (3)(b),* the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) *The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.*

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations.”

**Section 5.** Section 19-2-909, MCA, is amended to read:

**“19-2-909. Execution or withholding for support obligation — rulemaking.** (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant’s support obligation.

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

(a) “Execution” means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) “Income withholding” means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) “Participant” means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) “Support obligation” has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) ~~The maximum amount of disability or survivorship benefits that may be apportioned and paid~~ under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. *The maximum amount paid may be zero, depending on the member’s age and service credit at the time of disability or death.*

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount ~~apportioned~~ *paid* may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments ~~apportioned~~ *paid* from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

**Section 6.** Section 19-3-401, MCA, is amended to read:

**"19-3-401. Membership — inactive vested members — inactive nonvested members.** (1) Except as otherwise provided in this chapter, all employees shall *must* become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

- (a) returns to service within 30 days of termination of employment; or
- (b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district *or a public institution of higher education* is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits.”

**Section 7.** Section 19-3-412, MCA, is amended to read:

**“19-3-412. Optional membership.** (1) Except as provided in subsection (2), the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, *including individuals appointed to fill the unexpired term of elected officials*, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) ~~(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.~~

~~(b)(a)~~ A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator’s prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator’s membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer’s share of contributions required to purchase a legislator’s service credit under this subsection ~~(2)(b)~~ (2)(a).

~~(e)(b)~~ A member who after April 17, 2003, is elected to a local government position in which the member works less than 960 hours in a calendar year may,

within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection ~~(2)~~(e) (2)(b), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership ~~shall~~ *must* become a member even if the employee previously declined membership and did not have a 30-day break in service."

**Section 8.** Section 19-3-510, MCA, is amended to read:

**“19-3-510. Employment in United States government.** (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, *42 U.S.C. 4701, et seq.*, may purchase the federal employment as service credit in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member’s payments into the pension trust fund; or

(b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation, ~~provided that~~ *if* the highest average compensation does not exceed 100% of the member’s highest annual compensation earned as a state or local government employee.”

**Section 9.** Section 19-3-1105, MCA, is amended to read:

**“19-3-1105. Benefit upon second retirement.** (1) Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member’s initial retirement, but only with respect to the service credit earned after reemployment.

(2) Upon retirement subsequent to a cancellation of a *disability benefit* under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, *as applicable*. The recalculated benefit is based on service credit accumulated at the time of the member’s previous retirement plus any service credit accumulated subsequent to reemployment.”

**Section 10.** Section 19-3-1106, MCA, is amended to read:

**“19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions.** (1) A retired member under 65 years of age 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 65 years of age or older 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, 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 retiree returning to employment covered by the retirement system and the returning employee's employer 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 month after retirement.

(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) *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 19-3-1202, MCA, is amended to read:

**"19-3-1202. Amount of lump-sum death payment.** (1) The amount of death payment to be made to those eligible for death payments *the designated beneficiary of a deceased member* is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

(a) the member's accumulated contributions;

(b) *subject to subsection (2)*, an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b)."

**Section 12.** Section 19-3-1203, MCA, is amended to read:

**"19-3-1203. Election of optional death annuity.** The designated beneficiary of a *deceased* member may elect, by filing a written application with the board, to have the ~~lump-sum~~ death payment *provided for in 19-3-1201* paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits."

**Section 13.** Section 19-3-1204, MCA, is amended to read:

**"19-3-1204. Survivorship benefit elected by beneficiary.** (1) A designated beneficiary eligible to receive a ~~lump-sum~~ death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) ~~The~~ *the deceased* member on behalf of whom the death benefit is payable had completed 5 years of membership service;:

(b) ~~The~~ *the* designated beneficiary is a natural person; *and*

(c) ~~The~~ *the* designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the ~~lump-sum~~ death payment.

(2) A designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a ~~lump-sum~~ death payment.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

**Section 14.** Section 19-3-2111, MCA, is amended to read:

**"19-3-2111. Plan membership — written election required — failure to elect — effect of election.** (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within ~~12 months after the member's rehire date~~ *the 12-month period provided for in subsection (2)(a)*, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within ~~12 months of the member's hire date~~ *the 12-month period provided for in subsection (2)(a)*, elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board *and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.*

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.



(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

**Section 15.** Section 19-3-2112, MCA, is amended to read:

**"19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.** (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, ~~within 12 months after that date~~ *the 12-month period provided for in subsection (2)(b)*, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, ~~within 12 months after the member's hire or rehire date~~ *the 12-month period provided for in subsection (2)(b)*, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes

inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within ~~12 months of the member's hire date~~ *the 12-month period provided for in subsection (2)(b)*, elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board *and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.*

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the

Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

**Section 16.** Section 19-3-2113, MCA, is amended to read:

**"19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan.** (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months ~~shall become~~ *is* a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan *pursuant to 19-3-2111 or 19-3-2112* may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the optional retirement program."

**Section 17.** Section 19-6-707, MCA, is amended to read:

**"19-6-707. Minimum monthly benefit.** (1) Subject to the limitations contained in subsection (2), the following retired members, or their survivors, who are not covered by 19-6-710 or 19-6-711 are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated."

**Section 18.** Section 19-7-101, MCA, is amended to read:

**"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Detention officer" means any detention officer, as defined in 44-4-302, who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.

(3) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, 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 normal 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.

(4) "Investigator" means a person who is employed *by the department of justice* as a criminal investigator or as a gambling investigator ~~for the department of justice~~.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

**Section 19.** Section 19-7-312, MCA, is amended to read:

**“19-7-312. Transfer of membership — purchase of previous service.**

A person who elects to become a member of the sheriffs’ retirement system pursuant to 19-7-301 may transfer the member’s *previous* service credit in the public employees’ retirement system *or in another system provided for in chapter 5, 6, 8, 9, or 13 of this title* into the sheriffs’ retirement system *by paying the actuarial cost required under the provisions of 19-2-715.*”

**Section 20.** Section 19-7-1101, MCA, is amended to read:

**“19-7-1101. Reemployment of retired member.** (1) A retired member who returns to service for ~~60 or more working days~~ *480 hours or more* in a calendar year ~~shall~~ *must* become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for ~~less than 60 working days~~ *480 hours* in a calendar year may not become an active member. The retirement benefit of a retired member employed in service must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year.”

**Section 21.** Section 19-8-301, MCA, is amended to read:

**“19-8-301. Membership — inactive vested members — inactive nonvested members.** (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens’ and peace officers’ retirement system and, beginning on the first day of employment, must become and shall remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;  
*and*

~~(h) motor vehicle inspectors employed by the department of justice; and~~

~~(i)~~*(h)* drill instructors employed by the department of corrections.

(2) (a) An inactive member with at least 5 years of membership service 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.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member’s accumulated contributions and not the employer’s contributions.

(3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member’s accumulated contributions.”

**Section 22.** Section 19-8-302, MCA, is amended to read:

**“19-8-302. Public employees’ retirement system — transfer of membership.** (1) Except as provided in subsections (2) and (4) subsection (3), an eligible peace officer shall *must* become a member of the game wardens’ and peace officers’ retirement system on the first day of service.

~~(2) A member of the public employees’ retirement system who first becomes eligible for membership in the game wardens’ and peace officers’ retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees’ retirement system by filing a written election that must be received by the board no later than December 31, 2001.~~

~~(3)(2) A person who is a member of the game wardens’ and peace officers’ retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the *game wardens’ and peace officers’* retirement system by filing a written election with the board no later than 30 days after transfer to the new position.~~

~~(4)(3) A person who is a member of the public employees’ retirement system who transfers to a position covered by the game wardens’ and peace officers’ retirement system may elect to become a member of the retirement system or may continue membership in the public employees’ retirement system by filing a written election with the board no later than 30 days after transfer to the new position.”~~

**Section 23.** Section 19-9-1202, MCA, is amended to read:

**“19-9-1202. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) “DROP” means the deferred retirement option plan established pursuant to this part.

~~(2) “DROP accrual account” means the monthly benefit member’s accumulated monthly DROP accruals, including any postretirement adjustments, that would have been payable had the participant terminated service and retired, multiplied by each month of the DROP period that the participant completes, plus interest.~~

(3) “DROP benefit” means the lump-sum benefit calculated and distributed as provided in this part.

(4) “DROP period” means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) “Monthly DROP accrual” means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated service and retired.

(6) “Participant” means a member of the retirement system who has elected to participate in the DROP pursuant to this part.”

**Section 24.** Section 19-9-1205, MCA, is amended to read:

**“19-9-1205. Retirement system contributions — benefit payments to individual DROP accounts — investment returns.** (1) During a member’s participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a *monthly* DROP accrual *and the contribution to the participant's DROP account.*"

**Section 25.** Section 19-9-1206, MCA, is amended to read:

**"19-9-1206. Survivorship benefits.** (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus any benefits paid from the member's *DROP* account, including monthly DROP accruals.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

**Section 26.** Section 19-17-102, MCA, is amended to read:

**"19-17-102. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "*Designated official*" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

~~(7)(8)~~ "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

~~(8)(9)~~ "Fire company" means a fire company organized under 7-33-2311 in an unincorporated area, town, or village ~~in accordance with 7-33-2311~~, and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33.

~~(9)(10)~~ "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

~~(10)(11)~~ "Member" means a volunteer firefighter who has service credited under this chapter.

~~(11)(12)~~ "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(12)(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

(13)(14) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(14)(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(15)(16) "Surviving spouse" means the spouse married to a member when the member dies.

(16)(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(17) "*Training*" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

(17)(19) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

**Section 27.** Section 19-17-108, MCA, is amended to read:

**"19-17-108. Credit for service as volunteer firefighter — records.** (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of ~~instruction~~ training in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or ~~supervisor~~ *designated official* of the fire company;

(b) the volunteer firefighter's participation in the training program is documented in the fire ~~department~~ *company's* records filed and maintained by the chief or ~~supervisor~~ *designated official*; and

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more.

(4) *The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company."*

**Section 28.** Section 19-17-401, MCA, is amended to read:

**"19-17-401. Eligibility for pension and disability benefits.** (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).



(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire ~~department~~ *company* without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit."

**Section 29.** Section 19-17-402, MCA, is amended to read:

**"19-17-402. Certificate of eligibility.** The chief or ~~presiding officer~~ *designated official* of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath before a notary, stating whether the *fire* company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of ~~instruction~~ *training* during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits."

**Section 30.** Section 19-17-502, MCA, is amended to read:

**"19-17-502. Procedure for claiming medical expenses.** (1) A member who claims medical expenses under 19-17-504 shall submit a claim on a form provided by the board. The claim must be verified by the member and by competent medical authority. The claim must be submitted within 1 year from the date of incurring the injury or illness.

(2) The claim must contain:

- (a) the name and address of the member;
- (b) the date, place, and manner of incurring the injury or illness;
- (c) the name and address of the attending physician, surgeon, or nurse, if any;
- (d) the dates of hospitalization, if hospitalized;
- (e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;
- (f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses;
- (g) an affidavit from the chief or ~~secretary~~ *designated official* of the fire company stating that the fire company was ~~duly~~ organized under the laws of Montana in an unincorporated town or village, that the member was, at the time of the injury or illness, an active member of the company, and that the injury or illness was incurred in the line of duty as described in 19-17-105.”

**Section 31. Repealer.** Section 19-8-1110, MCA, is repealed.

Approved April 5, 2007

## CHAPTER NO. 129

[HB 157]

AN ACT REVISING EXCEPTIONS TO THE LIMIT ON THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM ADMINISTRATIVE EXPENSES; CLARIFYING THAT FUNDS DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM MAY BE USED TO PAY HEALTH CARE CLAIMS; AMENDING SECTIONS 53-4-1007 AND 53-4-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

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

**Section 1.** Section 53-4-1007, MCA, is amended to read:

**“53-4-1007. (Temporary) Department may contract for services.** (1) The department of public health and human services may administer the program directly or contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided or based on a fee for service as established by the department.

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. In operating the program and providing health services, the department may:

- (a) pay providers on a fee-for-service basis in a self-funded program and contract with an insurance company, third-party administrator, or other entity to provide administrative services, including but not limited to processing and payment of claims with program funds;

(b) purchase health coverage for eligible children from an insurance company or other entity through premiums, capitated payments, or other appropriate methods;

(c) purchase health coverage as provided in subsection (2)(b) for some types of health services and contract directly with providers for other types of health services on a fee-for-service basis; or

(d) pay providers on a fee-for-service basis and directly provide administrative services in a self-funded program.

(3) If the department of public health and human services contracts with an insurance company or other entity to administer the program as provided in subsection (2)(b) or (2)(c), not more than 12% of the contract payment may be used for administrative expenses, including:

(a) direct and indirect expenses as specified in 33-22-1514;

(b) risk charges; and

(c) any applicable assessments, fees, and taxes.

(4) If the department operates the program by providing administrative services under subsection (2)(a), (2)(c), or (2)(d), the department's administrative expense may not exceed the lesser of 10% of *total program expenses* or the applicable federal limitation, *excluding costs for federally required audits*.

(5) (a) An insurance company or other entity that contracts with the department for a fully insured contract as provided in subsection (2)(b) shall calculate the surplus account balance at the end of each contract year and may retain an amount equal to 50% of the risk charge allowed under the contract. The remainder of the surplus balance must be deposited in the state special revenue account provided for in 53-4-1012.

(b) For the purposes of this subsection (5):

(i) "risk charge" means the percentage of the administrative expense allowed in the contract for assuming the risk;

(ii) "surplus account balance" means funds that remain after all claims and all administrative expenses have been paid for a claim period. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 7, Ch. 565, L. 2005.)"

**Section 2.** Section 53-4-1012, MCA, is amended to read:

**"53-4-1012. (Temporary) State special revenue account.** (1) There is an account in the state special revenue fund to the credit of the state children's health insurance program administered by the department of public health and human services. Any interest or income derived from the account must be deposited in the account.

(2) Money deposited in this account must be used by the department to cover additional children, to expand eligibility within the limits provided in 53-4-1004, to reduce or maintain premiums, *to pay health care claims*, or to establish and maintain a reserve.

(3) The department shall transfer the unexpended balance of an appropriation into the account provided for in subsection (1) at the expiration of the appropriation to be used for the purposes stated in subsection (2). (Terminates on occurrence of contingency—sec. 7, Ch. 565, L. 2005.)"

**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 July 1, 2006.

**Section 5. Contingent termination — transfer of excess funds.** (1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund.

Approved April 5, 2007

## CHAPTER NO. 130

[HB 177]

AN ACT REPEALING THE MONTANA ELECTRONIC TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS ACT; AMENDING SECTIONS 30-18-102, 30-18-118, AND 61-11-503, MCA; AND REPEALING SECTIONS 2-20-101, 2-20-102, 2-20-103, 2-20-104, 2-20-105, 2-20-106, 2-20-107, 2-20-108, 2-20-109, 2-20-110, AND 2-20-111, MCA.

WHEREAS, the 56th Montana Legislature adopted the Montana Electronic Transactions With State Agencies and Local Government Units Act in an effort to establish processes by which citizens, businesses, and other entities could effectively, efficiently, and legally transact official business with state and local governments through technology enabled by electronic means; and

WHEREAS, the 57th Montana Legislature adopted the Uniform Electronic Transactions Act in an effort to expand processes by which citizens, businesses, and other entities can effectively, efficiently, and legally transact official business through technology enabled by electronic means; and

WHEREAS, the adoption and implementation of the Uniform Electronic Transactions Act has eliminated the need for the Montana Electronic Transactions With State Agencies and Local Government Units Act.

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

**Section 1.** Section 30-18-102, MCA, is amended to read:

**“30-18-102. Definitions.** In this part:

(1) “agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;:

(2) “automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;:

(3) “computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;:

(4) “contract” means the total legal obligation resulting from the parties’ agreement as affected by this part and other applicable law;:

(5) “cryptosystem” means a system that transforms or encrypts information for the purpose of secrecy or authenticity. The term includes a computer-based security procedure capable of generating and using a key pair.

(5)(6) “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;:

(6)(7) “electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;:

(7)(8) “electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means;:

(8)(9) “electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;:

(9)(10) “governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state;:

(10)(11) “information” means data, text, images, sounds, codes, computer programs, software, databases, or the like;:

(11)(12) “information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information;:

(12)(13) “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity;:

(13)(14) “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;:

(14)(15) “security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15)(16) “state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(17) “state agency” means a department, board, commission, authority, or other governmental entity of the executive branch of state government, including the Montana university system, that sends or receives electronic records;

(16)(18) “transaction” means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.”

**Section 2.** Section 30-18-118, MCA, is amended to read:

**“30-18-118. Interoperability.** (1) The secretary of state may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

(2) ~~The secretary of state Any state agency~~ may adopt rules to implement this part ~~for state government that are consistent with the provisions of Title 2, chapter 20, however.~~ *However*, governmental agencies are not limited to the use of a cryptosystem, ~~as defined in 2-20-103,~~ or any other specific technology for electronic transactions provided for in this part.”

**Section 3.** Section 61-11-503, MCA, is amended to read:

**“61-11-503. Definitions.** As used in this part, the following definitions apply:

(1) “Disclose” means to engage in any practice or conduct that makes available or known, by means of any communication to another person, organization, or entity, personal information contained in a motor vehicle record.

(2) “Express consent” means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in ~~2-20-103~~ 30-18-102, from the person to whom the personal information pertains.

(3) “Highly restricted personal information” means an individual’s photograph or image, social security number, or medical or disability information.

(4) “Motor vehicle record” means any record maintained by the department that pertains to a driver’s license, commercial driver’s license, driving permit, motor vehicle title, motor vehicle registration, or identification card issued by the department.

(5) “Person” does not mean a state agency or local government entity.

(6) (a) “Personal information” means information that identifies a person, including a person’s name, address, telephone number, social security number, driver’s license or identification number, date of birth, photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person’s driver’s license or vehicle registration status, or a vehicle’s insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics."

**Section 4. Repealer.** Sections 2-20-101, 2-20-102, 2-20-103, 2-20-104, 2-20-105, 2-20-106, 2-20-107, 2-20-108, 2-20-109, 2-20-110, and 2-20-111, MCA, are repealed.

Approved April 5, 2007

## CHAPTER NO. 131

[HB 207]

AN ACT REVISING WHEN COUNTY COMMISSIONERS AND OTHER COUNTY ELECTED OFFICIALS SHALL TAKE THE OATH OF OFFICE; AND AMENDING SECTIONS 7-4-2105 AND 7-4-2205, MCA.

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

**Section 1.** Section 7-4-2105, MCA, is amended to read:

**"7-4-2105. Term of office.** (1) The term of office of county commissioners is 6 years. A county commissioner takes office at 12:01 a.m. on January 1 succeeding the date of the election at which the county commissioner was elected.

(2) A county commissioner elected to take office shall take the oath of office on *or before* the last business day of December following the commissioner's election, except as provided for in 7-4-2106."

**Section 2.** Section 7-4-2205, MCA, is amended to read:

**"7-4-2205. Term of office — oath.** (1) Each person elected to an office named in 7-4-2203 holds the office for the term of 4 years and until a successor is elected and qualified.

(2) A person appointed to any of the different offices serves at the pleasure of the commissioners.

(3) Each officer who is mentioned in this part and who is elected to office shall:

(a) take the oath of office on *or before* the last business day of December following the officer's election; and

(b) take office at 12:01 a.m. on January 1 following the officer's election."

Approved April 5, 2007

## CHAPTER NO. 132

[HB 284]

AN ACT AUTHORIZING THE RENOVATION OF THE HISTORIC BUILDING AT THE MORONY TOWNSITE IN GIANT SPRINGS STATE PARK; GRANTING AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER AN AGREEMENT WITH THE LITTLE SHELL CHIPPEWA TRIBE FOR MAINTENANCE AND SECURITY AT THE PARK IN EXCHANGE FOR THE TRIBE'S USE OF THE PARK AND

**RENOVATION AND USE OF THE BUILDING; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1. Renovation of Morony apartment building at Giant Springs state park.** (1) (a) The department of fish, wildlife, and parks may enter into a 10-year agreement with the Little Shell Chippewa tribe that would authorize the tribe to renovate the historic Morony apartment building at the Morony townsite in Giant Springs state park and use the building for offices, interpretive areas, and related cultural and recreational activities.

(b) If the provisions of the agreement have been adhered to during the first 10-year period, the department and the tribe may renew the agreement for a longer term or agree to transfer the building and acreage to the tribe.

(c) The agreement must provide that written approval by the department is required for major improvements costing more than \$5,000 and for architectural plans proposed by the tribe for the building and site. The department may not unreasonably withhold approval for the tribe's proposals.

(d) The agreement must contain a provision that the site remain open to the public for general recreation and related activities during the term of the agreement.

(e) The agreement must contain a provision that gambling, casinos, or similar gaming enterprises are prohibited in the building or on the site.

(f) An appropriate default provision must be included in the agreement.

(2) Renovation and improvement of the building are contingent on written concurrence from PPL Montana, from whom the original Morony townsite was granted. All renovation of and upgrades to the building must comply with current and applicable building codes, permitting, requirements of the federal Americans With Disabilities Act of 1990, and other requirements related to a public building.

(3) The agreement with the Little Shell Chippewa tribe may include a provision that grants the tribe nonexclusive use of the park and associated outbuildings and fixtures and the renovated building in exchange for the tribe's maintenance and security at the townsite, including the renovated building.

**Section 2. Appropriation.** There is appropriated \$500 from the general fund to the department of fish, wildlife, and parks for the purposes of [section 1].

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 4. Effective date.** [This act] is effective July 1, 2007.

Approved April 5, 2007

## CHAPTER NO. 133

[HB 341]

AN ACT REVISING THE LAWS RELATING TO THE PREPARATION OF JUROR LISTS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 46-17-202, AND 61-5-127, MCA; REPEALING SECTION 3-15-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.



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

**Section 1.** Section 3-15-402, MCA, is amended to read:

**“3-15-402. (Temporary) Selection of qualified persons.** (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present *The secretary of state* shall select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. A person’s name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313.

**3-15-402. (Effective October 1, 2007) Selection of qualified persons.** (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present, working with the office of the *The* secretary of state, shall select from the most recent list of all registered electors, as prepared by the county registrar, working with the office of the secretary of state, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. The officers, working with the office of the secretary of state, shall then combine the resulting list with the list submitted to the clerk of the district court *secretary of state* under 61-5-127, ensuring that a person’s name does not appear on the combined list more than once. Each name appearing on the combined list must be assigned a number that must be placed opposite the name on the combined list and must be considered the number of the juror opposite whose name it appears. A person’s name may not appear on a combined list for more than one court during a 1-year term.

(2) The combined list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313.”

**Section 2.** Section 3-15-403, MCA, is amended to read:

**“3-15-403. (Temporary) Lists delivered to clerk *Jury lists — filing — public inspection.*** (1) A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by the clerk in the clerk’s office. (1) *On or before the first Monday in May, the list prepared under 3-15-402 must be delivered by the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court’s office no later than 5 business days after the receipt of the list.*

(2) A copy of the latest jury list *lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202* and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of the district court. *and An excerpt, listing the name, address, and birth year of all jurors, must be made available for public inspection during normal business hours.*

(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.

**3-15-403. (Effective October 1, 2007) Jury lists — filing — public inspection.** (1) ~~The~~ *On or before the first Monday in May, the combined list prepared under 3-15-402 must be delivered by the office of the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court's office no later than 5 business days after the receipt of the combined list.*

(2) A copy of the latest jury lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202 and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of the district court. ~~and~~ *An excerpt, listing the name, address, and birth year of all jurors, must be made available for public inspection during normal business hours."*

**Section 3.** Section 3-15-404, MCA, is amended to read:

**"3-15-404. (Temporary) Duty of jury commissioner — jury box or computer database.** (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list *filed under 3-15-403.*

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors ~~prepared filed under the provisions of 3-15-402 3-15-403~~ to be entered into a computerized database.

(5) *A person's name may not appear on a jury list for more than one court during a 1-year term.*

(6) *The clerk of court shall prepare a list of persons to serve as trial jurors for the ensuing year for the district court or each division of the district court. On or before the second Monday of June, the clerk of court shall prepare the jury list pursuant to 46-17-202.*

(7) *If the clerk of court is satisfied that a person whose name is drawn is deceased, is mentally incompetent, has permanently moved from the county, or has been permanently excused under the provisions of 3-15-313, the person's name must be omitted from the jury list. The reason for the omission must be recorded.*

**3-15-404. (Effective October 1, 2007) Duty of jury commissioner — jury box or computer database.** (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list filed under 3-15-403.

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors filed under 3-15-403 to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term.

(6) The clerk of court shall prepare a ~~jury~~ list of persons to serve as trial jurors for the ensuing year for the district court or each division of the district court. *On or before the second Monday of June, the clerk of court shall prepare the jury list pursuant to 46-17-202.*

(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, is mentally incompetent, ~~or~~ has permanently moved from the county, *or has been permanently excused under the provisions of 3-15-313*, the person's name must be omitted from the jury list. *The reason for the omission must be entered in the minutes of the court recorded."*

**Section 4.** Section 46-17-202, MCA, is amended to read:

**"46-17-202. (Temporary) Formation of trial jury for justices', municipal, and city courts.** (1) At the time of preparing the district court jury list under 3-15-404(6), ~~the county commissioners and clerk and recorder~~ *clerk of the district court* shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be filed in the office of the clerk of the district court *as provided in 3-15-403*. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.

**46-17-202. (Effective October 1, 2007) Formation of trial jury for justices', municipal, and city courts.** (1) At the time of preparing the district court jury list under 3-15-404(6), the clerk of the district court shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must

include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be ~~kept on file~~ *filed* in the office of the clerk of the district court as provided in 3-15-403. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.”

**Section 5.** Section 61-5-127, MCA, is amended to read:

**“61-5-127. (Effective October 1, 2007) Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court — jury selection purposes.** (1) On the second Monday of ~~May~~ *April* of each year, the department shall submit to the ~~clerk of the district court of each county~~ *secretary of state* a list, prepared from the department’s databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older and whose address is in that county. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city’s jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general’s designee.

(3) The department may not provide the social security or driver’s license numbers of persons on the list for any purpose.”

**Section 6. Repealer.** Section 3-15-401, MCA, is repealed.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 5, 2007

## CHAPTER NO. 134

[HB 397]

AN ACT PROVIDING THAT ANY PERSONAL PROPERTY THAT IS IN A MOTOR VEHICLE THAT IS SUBJECT TO A LIEN FOR SERVICES, TOWING, OR STORAGE IS ALSO SUBJECT TO THE LIEN, EXCEPT FOR CERTAIN ITEMS SPECIFICALLY EXEMPTED FROM THE LIEN; AND AMENDING SECTION 71-3-1201, MCA.

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

**Section 1.** Section 71-3-1201, MCA, is amended to read:

**“71-3-1201. Who may have lien — agisters’ lien — lien for service — towing and storage lien — extension of lien to certain personal property contained in motor vehicle that is subject to a lien.** (1) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep,

hogs, or other stock are entrusted has a lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock or for providing a service listed in subsection (1)(b) and may retain possession of the stock until the sum due is paid.

(b) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock provided for in this subsection (1), a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) (a) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on ~~it~~ *the article*. The lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.

(b) *Any personal property that is in a motor vehicle that is subject to a lien, as provided in subsection (2)(a), is also subject to the lien, except for the following:*

(i) *food items;*

(ii) *perishable goods;*

(iii) *prescription items;*

(iv) *operators' licenses and other identifying documents;*

(v) *cash, credit cards, debit cards, checks, or checkbooks;*

(vi) *personal records, legal records, and business records;*

(vii) *child safety items; and*

(viii) *wallets, purses, bags, or other containers that contain the items listed in subsections (2)(b)(iv) through (2)(b)(vi)."*

Approved April 5, 2007

## CHAPTER NO. 135

[HB 412]

AN ACT ALLOWING PUBLIC BENEFIT CORPORATIONS TO MAKE TRANSACTIONS WITH MEMBERS, DIRECTORS, OR OFFICERS IF IN CONFORMITY WITH ITS CHARITABLE PURPOSES UPON CERTAIN CONDITIONS; AND AMENDING SECTION 35-2-1401, MCA.

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

**Section 1.** Section 35-2-1401, MCA, is amended to read:

**“35-2-1401. Prohibited distributions — *permitted transactions*.** (1) Except as authorized by 35-2-1402, a corporation may not make any distributions.

(2) *A public benefit corporation may, subject to the requirements of Title 15, chapter 31, and this chapter, as applicable:*

(a) *pay reasonable compensation or reimburse reasonable expenses to members, directors, or officers for services rendered; and*

(b) *confer benefits upon or make contributions to members in conformity with its charitable purposes if after the transaction is completed:*

(i) *the corporation would be able to pay its debts as they become due in the usual course of its activities; and*

(ii) *the corporation's total assets would at least equal the sum of its total liabilities."*

Approved April 5, 2007

## CHAPTER NO. 136

[HB 497]

AN ACT PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY AN ADVANCED PRACTICE REGISTERED NURSE OR A LICENSED PHYSICIAN ASSISTANT AS WELL AS A LICENSED PHYSICIAN; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-803, MCA, is amended to read:

**"87-2-803. Persons with disabilities — service members — definitions.** (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in

subsection (9). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician, *an advanced practice registered nurse, or a licensed physician assistant* to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician, *an advanced practice registered nurse, or a licensed physician assistant* to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician, *an advanced practice registered nurse, or a licensed physician assistant* under subsection (9) must be on a form provided by the department.

(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year after the member's election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a \$25 Class AAA resident combination sports license in the year of election and the license year after the member's election.

(b) To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."

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

Approved April 5, 2007

## CHAPTER NO. 137

[HB 770]

AN ACT REVISING PROVISIONS RELATING TO CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF HUNTING FROM A VEHICLE; PROVIDING THAT THE BOARD OF MEDICAL EXAMINERS RATHER THAN A VOLUNTARY BOARD REVIEW DISABILITY CERTIFICATION DISAGREEMENTS; PROVIDING THAT WHEN A PERSON OR THE DEPARTMENT DISAGREES WITH A DETERMINATION OF ELIGIBILITY, A REQUEST MAY BE MADE FOR A REVIEW BY THE BOARD OF MEDICAL



EXAMINERS; AMENDING SECTIONS 37-3-203 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-3-203, MCA, is amended to read:

**“37-3-203. Powers and duties.** The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness; and

(5) *review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and*

~~(5)~~(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.”

**Section 2.** Section 87-2-803, MCA, is amended to read:

**“87-2-803. Persons with disabilities — service members — definitions.** (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). ~~The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (9). Each board must have at least one Montana-licensed physician as a member.~~

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician under subsection (9) must be on a form provided by the department.

(11) ~~A The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3) the board of medical examiners pursuant to 37-3-203.~~

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year after the member's election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a \$25 Class AAA resident combination sports license in the year of election and the license year after the member's election.

(b) To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."

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

Approved April 5, 2007

## CHAPTER NO. 138

[SB 116]

AN ACT PROVIDING IDENTITY THEFT PROTECTION; ALLOWING CONSUMERS TO LIMIT ACCESS TO THEIR OWN CREDIT REPORTS; REQUIRING IMPLEMENTATION PROCEDURES FOR CONSUMER REPORTING AGENCIES; PROVIDING FOR TEMPORARY LIFTING OF SECURITY FREEZES; REQUIRING NOTICES TO CONSUMERS ABOUT THE OPTION FOR A SECURITY FREEZE; PROVIDING EXEMPTIONS AND EXCEPTIONS; SETTING FEES; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 11], the following definitions apply:

(1) “Consumer” means an individual.

(2) “Consumer reporting agency” means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing credit reports to a third party and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

(3) “Credit report” means any written, oral, or other communication of any information by a consumer reporting agency:

(a) bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(b) that is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for:

(i) credit to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) any other purpose authorized under 15 U.S.C. 1681(b).

(4) “Person” means an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(5) “Proper identification” means information sufficient to verify identity.

(6) “Reviewing the account” or “account review” includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(7) (a) “Security freeze” means a notice that:

(i) is placed in a consumer’s credit report at the request of the consumer;

(ii) is subject to exceptions and exemptions provided in [section 9];

(iii) prohibits the consumer reporting agency from releasing all or any part of the consumer’s credit report or credit score without the express authorization of the consumer, as provided in [section 4].

(b) A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer’s credit report.

**Section 2. Placement of security freeze.** A consumer may elect to place a security freeze on the consumer’s own credit report by making a request:

(1) in writing by regular or certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive the request; or

(2) directly to the consumer reporting agency through a secure electronic connection specified by the consumer reporting agency by January 31, 2009.

**Section 3. Consumer reporting agency requirements.** (1) Except as provided in subsection (2), a consumer reporting agency shall place a security freeze on a consumer’s credit report no later than 5 business days after receiving from the consumer:

(a) a written or electronic request, as provided in [section 2];

(b) proper identification; and

(c) a fee, if applicable.

(2) If a consumer who has been the victim of identity theft, as prescribed by 45-6-332, requests a security freeze, the consumer reporting agency shall place a security freeze on the consumer's credit report no later than 24 hours after receiving notice as provided in [section 2] and a valid police report, investigative report, or complaint that the consumer has filed with a law enforcement agency.

(3) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 business days of placing the security freeze and at the same time shall provide the consumer with a unique personal identification number, password, or similar device to be used by the consumer when providing authorization for a release of the consumer's credit for a specific party or period of time, as provided in [section 4].

(4) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

**Section 4. Temporary lifting of security freeze — consumer requirements — consumer reporting agency duties — notification.** (1) A consumer who wishes to allow access to the consumer's own credit report by a specific party or for a specific period of time while a security freeze is in place shall contact each consumer reporting agency, using a point of contact designated by the consumer reporting agency by regular or certified mail, telephone, or a secure electronic connection, request that the security freeze be temporarily lifted, and provide all of the following:

(a) proper identification;

(b) the unique personal identification number, password, or device provided by the consumer reporting agency pursuant to [section 3(3)];

(c) the proper information regarding the third party who is to receive the credit report or the time period for which the credit report is to be available to users of the credit report; and

(d) a fee, if applicable.

(2) (a) Except as provided in subsection (2)(b), a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report as provided in subsection (1) shall comply with the request no later than 3 business days after receiving the request.

(b) By no later than January 31, 2009, a consumer reporting agency shall honor a request for the temporary lifting of a security freeze made by telephone or through a secure electronic connection designated by the consumer reporting agency within 15 minutes of receiving the request unless one of the following circumstances applies:

(i) the consumer fails to meet the requirements of subsections (1)(a) through (1)(c); or

(ii) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

(A) a natural disaster or act of God, including fire, earthquake, or hurricane;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;

(D) governmental action, including emergency orders or regulations or judicial or law enforcement action;

(E) receipt of a removal request outside of normal business hours; or

(F) maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled or unexpected or unscheduled.

(c) For the purposes of this section, "normal business hours" means from 6 a.m. to 9:30 p.m., mountain standard time or mountain daylight time, seven days a week, excluding holidays.

(3) A consumer reporting agency shall:

(a) designate the contact address and telephone number along with a telefax number or appropriate electronic access address when providing the unique personal identification number, password, or other device as provided in [section 3(3)]; and

(b) develop procedures to implement this section by January 31, 2009, involving the use of telephone, telefax, or electronic connection, using a process for legally required notices provided for in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001.

(4) Only the attorney general may enforce the provisions of this section related to a failure to comply with the 15-minute requirement for the temporary lifting of a security freeze.

**Section 5. Consumer reporting agency security freeze removal procedures — notification.** (1) A consumer reporting agency shall remove or temporarily lift a security freeze placed on a credit report:

(a) upon the consumer's request pursuant to [section 4] or [section 7]; or

(b) if the consumer reporting agency determines that the consumer made a material misrepresentation of fact when requesting the security freeze.

(2) When a consumer reporting agency removes a security freeze as provided in subsection (1)(b), the consumer reporting agency shall notify the consumer in writing at least 5 business days prior to removing the security freeze on the credit report.

**Section 6. Third-party contacts.** If a third party not enumerated in [section 9(1)] requests for the purpose of an application access to a credit report on which a security freeze is in effect and the consumer has not provided a temporary lifting of a security freeze for that specific party or a period of time, the third party may treat the application as incomplete.

**Section 7. Security freeze removal procedure.** (1) A security freeze must remain in place until the consumer requests that the security freeze be removed or temporarily lifted as provided in [section 4].

(2) After receiving a request from the consumer to remove a security freeze, a consumer reporting agency shall remove the security freeze within 3 business days of receiving a removal request at the point of contact designated by the consumer reporting agency if the consumer provides the following:

(a) proper identification; and

(b) the unique personal identification number, password, or other device provided by the consumer reporting agency pursuant to [section 3(3)].

**Section 8. Notice of rights.** A consumer reporting agency shall provide a notice of rights as stated below at any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681(g) of the Fair Credit Reporting Act.

NOTICE OF RIGHTS: Montana Consumers  
Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to Montana law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within 5 business days you will be provided a personal identification number, password, or other device to use if you choose to remove the security freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the security freeze is in place. To provide that authorization, you shall contact the consumer reporting agency and provide all of the following:

- (1) the unique personal identification number, password, or other device provided by the consumer reporting agency;
- (2) the proper identification to verify your identity;
- (3) the proper information regarding the third party or parties who are to receive the credit report or the period of time for which the credit report is to be available to users of the credit report; and
- (4) a fee, if applicable.

A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report shall comply no later than 3 business days after receiving the request or, after January 31, 2009, within 15 minutes of receiving a request by telephone or through a secure electronic connection.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action may be brought against a consumer reporting agency or a user of your credit report.

**Section 9. Exceptions — exemptions.** (1) The provisions of [sections 1 through 8] and [section 10] do not apply to the following for the purposes of accessing or using a credit report:

- (a) a person or the person's subsidiary, affiliate, agent, or assignee with which the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship when using a credit report for the purposes of

reviewing the account or collecting the financial obligation owing for the account, contract, or debt;

(b) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted to a credit report under [section 4] for purposes of facilitating the extension of credit or other permissible use;

(c) any person using a credit report and acting pursuant to a court order, warrant, or subpoena;

(d) any federal, state, or local agency that administers a program for establishing and enforcing child support obligations;

(e) any federal, state, or local agency or its agents or assigns acting to investigate fraud;

(f) any federal, state, or local agency or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(g) a person for use of a credit report for the purpose of prescreening as described by the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(h) a person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed;

(i) a person or entity for the purpose of providing a consumer with a copy of the consumer's own credit report or score and upon the consumer's request;

(j) a person or entity regulated under Title 33; or

(k) a consumer reporting agency for its database or file that consists entirely of information concerning, and used solely for, one or more of the following: criminal record information, tenant screening, employment screening, fraud prevention or detection, or personal loss history information.

(2) The following entities are exempt from placing a security freeze on a credit report:

(a) a check services company or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments;

(b) a deposit account information service company that issues reports regarding account closures because of fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; or

(c) a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and that does not maintain a permanent database of credit information from which new credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a credit report by another consumer reporting agency.

**Section 10. Fees.** (1) Except as provided in subsection (2), a consumer reporting agency may charge an administrative fee, not to exceed \$3, to a consumer for each security freeze or temporary lifting of a security freeze as provided in [section 4], but not for removal of a security freeze as provided in [section 7].



(2) A consumer reporting agency may not charge a fee under [section 3] to a consumer who has been the victim of identity theft and who has submitted to the consumer reporting agency a valid police report, an investigative report, or complaint that the consumer has filed with a law enforcement agency.

(3) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails to retain the original personal identification number, password, or other device provided by the consumer reporting agency and if the consumer asks the consumer reporting agency to reissue the same or a new personal identification number, password, or other device.

**Section 11. Violations — penalties.** (1) A person who willfully fails to comply with any requirements imposed in [sections 2 through 10] with respect to a consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or

(b) punitive damages in an amount that the court may allow; and

(c) the costs of the action together with reasonable attorney fees as determined by the court in the case of a successful action to enforce liability under this section.

(2) A person who obtains a credit report or requests a security freeze, the temporary lifting of a security freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

(3) A person who negligently fails to comply with any requirement imposed in [sections 2 through 10] with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure; and

(b) the costs of the action together with reasonable attorney fees as determined by the court in the case of a successful action to enforce liability under this section.

(4) If a court finds that an unsuccessful pleading, motion, or other paper filed under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party reasonable attorney fees as determined by the court.

**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.

**Section 13. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 30, chapter 14, part 17, and the provisions of Title 30, chapter 14, part 17, apply to [sections 1 through 11].

**Section 14. Effective date.** [This act] is effective July 1, 2007.

Approved April 5, 2007

## CHAPTER NO. 139

[SB 119]

AN ACT CLARIFYING THE EXCHANGE OF YOUTH COURT RECORD INFORMATION WITH CERTAIN FACILITIES IN WHICH A YOUTH IS PLACED; AND AMENDING SECTION 41-5-216, MCA.

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

**Section 1.** Section 41-5-216, MCA, is amended to read:

**“41-5-216. Disposition of youth court, law enforcement, and department 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, or reports referred to in 45-5-624(7).

(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 ~~only~~ 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 ~~only~~ involved in informal proceedings *only*, 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) ~~Nothing in this~~ *This section prohibits* ~~prohibits~~ *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.*"

Approved April 5, 2007

## CHAPTER NO. 140

[SB 124]

AN ACT PROVIDING FOR THE COSTS OF THE MENTAL HEALTH EXAMINATION AND COMMITMENT OF A CRIMINAL DEFENDANT; PROVIDING THAT COSTS FOR THE EXAMINATION, CARE, CUSTODY, AND TREATMENT OF A CRIMINAL DEFENDANT FOR WHICH THE LEGISLATURE HAS MADE A GENERAL FUND APPROPRIATION MAY NOT BE CHARGED TO THE OFFICE OF COURT ADMINISTRATOR OR THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTIONS 3-5-901, 46-14-202, AND 46-14-221, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 3-5-901, MCA, is amended to read:

**“3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

- (a) salaries and benefits for:
  - (i) district court judges;
  - (ii) law clerks;
  - (iii) court reporters, as provided in 3-5-601;
  - (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and
  - (v) other employees of the district court;
- (b) in criminal cases:
  - (i) fees for transcripts of proceedings, as provided in 3-5-604;
  - (ii) witness fees and necessary expenses, as provided in 46-15-116;
  - (iii) juror fees and necessary expenses;
  - (iv) for a psychiatric ~~evaluation examination~~ *examination* under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4)(a)(i) and ~~(4)(a)(iii)~~; and
  - (v) for a psychiatric ~~evaluation commitment~~ *commitment* under 46-14-221, the cost of the ~~examination and other associated expenses~~, *transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings*, as provided in 46-14-221(5);
- (c) except as provided in 47-1-201(5), the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;
- (d) except as provided in 47-1-201(5), the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

- (i) transcript fees;
- (ii) witness fees; and
- (iii) expenses for psychiatric examinations;

(e) except as provided in 47-1-201(5), the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

- (i) transcript fees;
- (ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in 47-1-201(5), costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in 47-1-201(5), all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

**Section 2.** Section 46-14-202, MCA, is amended to read:

**"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the

issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid *by the court or, in district court proceedings, by the office of court administrator, as provided in 3-5-901 except as provided in subsection (4)(a)(iv);*

(ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid *by the defendant or, if the defendant was represented by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided by subsection (4)(a)(iv);*

(iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided in subsection (4)(a)(iv);

(iv) any costs for an examination performed by an employee of the department of public health and human services, any other associated expenses at a facility of the department of public health and human services, and any other associated expenses for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator or the office of state public defender.

(b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

(i) the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication.”

**Section 3.** Section 46-14-221, MCA, is amended to read:

**“46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.** (1) The issue of the defendant’s fitness to proceed may be raised by the court, by the defendant or the defendant’s counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant’s counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician’s prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant’s fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor

shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) ~~The~~ *Except as provided in subsection (6), the expenses of sending transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services, of keeping the defendant there the care, custody, and treatment of the defendant at the facility, and of bringing transporting the defendant back are payable by the court or, in district court proceedings, by the office of court administrator as a district court expense as provided for in 3-5-901.*

(6) *The cost of care, custody, and treatment at a facility for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator.”*

**Section 4. Effective date.** [This act] is effective July 1, 2007.

Approved April 5, 2007

## CHAPTER NO. 141

[SB 141]

AN ACT CLARIFYING WHEN PHOTOGRAPHS AND FINGERPRINTS TAKEN IN CRIMINAL CASES MUST BE RETURNED TO THE INDIVIDUAL FROM WHOM THEY WERE TAKEN; AND AMENDING SECTION 44-5-202, MCA.

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

**Section 1.** Section 44-5-202, MCA, is amended to read:

**“44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections; and

(c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.



(4) Whenever a person charged with the commission of a felony is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if the accused has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless the individual is incarcerated.

(6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) ~~Photographs~~ *If an individual is released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated, photographs* and fingerprints taken must be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

(a) upon order of the court that had jurisdiction; or

(b) upon the request of the individual ~~when the individual was released without the filing of charges or when the charges did not result in a conviction.~~

Approved April 5, 2007

## CHAPTER NO. 142

[SB 178]

AN ACT REMOVING THE REFERENCE TO MILLTOWN DAM IN THE DEFINITION OF THE UPPER CLARK FORK RIVER BASIN.

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

**Section 1.** Section 85-2-335, MCA, is amended to read:

**“85-2-335. Definitions.** Unless the context requires otherwise, in 85-2-335 through 85-2-338, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302.

(2) “Upper Clark Fork River basin” means the drainage area of the Clark Fork River *and the Blackfoot River* and ~~its~~ *their* tributaries above ~~Milltown dam~~ *the confluence of the Clark Fork River and the Blackfoot River.*”

Approved April 5, 2007

## CHAPTER NO. 143

[SB 208]

AN ACT INSTRUCTING MOTORISTS TO MAKE A COMPLETE STOP, AS IF AT A STOP SIGN, WHEN A TRAFFIC LIGHT IS INOPERATIVE.

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

**Section 1. Inoperable traffic control device.** An operator of a vehicle approaching an intersection in which an electronic traffic control device is inoperative shall stop in the manner prescribed in 61-8-344, except when directed to proceed by a police officer, highway patrol officer, or traffic control signal.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 2, and the provisions of Title 61, chapter 8, part 2, apply to [section 1].

Approved April 5, 2007

## CHAPTER NO. 144

[SB 239]

AN ACT ALLOWING ACTIVE DUTY MEMBERS OF THE UNITED STATES ARMED FORCES TO RENEW THEIR DRIVER'S LICENSE AT ANY TIME TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; ALLOWING FOR A MONTANA DRIVER'S LICENSE TO BE ISSUED TO A MEMBER OF THE UNITED STATES ARMED SERVICES TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; AND AMENDING SECTION 61-5-104, MCA.

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

**Section 1.** Section 61-5-104, MCA, is amended to read:

**“61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, as defined in 61-9-102, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) (a) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. ~~During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession.~~

(b) *A person serving in the United States armed forces may renew the person's driver's license at any point of the person's service, and any renewed license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service.*

(c) *A person serving in the United States armed forces may apply for a Montana driver's license upon meeting the requirements in 61-5-103, and this license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30*

days following the date on which the licensee is honorably separated from the service.”

Approved April 5, 2007

## CHAPTER NO. 145

[SB 322]

AN ACT REVISING THE LAWS RELATING TO DRIVERS INVOLVED IN HIT-AND-RUN ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES; INCREASING THE PENALTY FROM A MISDEMEANOR TO A FELONY AND REQUIRING REVOCATION OF A LICENSE OR PERMIT TO DRIVE FOR A PERIOD OF 2 YEARS IN CERTAIN CASES; AND AMENDING SECTIONS 61-5-205 AND 61-7-103, MCA.

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

**Section 1.** Section 61-5-205, MCA, is amended to read:

**“61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions.** (1) The department shall revoke an individual’s driver’s license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) any felony in the commission of which a motor vehicle is used;
- (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (e) fleeing from or eluding a peace officer; or
- (f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual’s driver’s license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more;
- (b) three reckless driving offenses committed within a period of 12 months; or
- (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under ~~subsection~~ *subsections* (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

(c) A suspension under subsection (2)(c) must be for one of the following periods:

- (i) 30 days for a first offense;
- (ii) 6 months for a second offense; and
- (iii) 1 year for a third or subsequent offense.”

**Section 2.** Section 61-7-103, MCA, is amended to read:

**“61-7-103. Accidents involving death or personal injuries.** (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close to the accident as possible but shall then return to and in every event remain at the scene of the accident until the driver has fulfilled the requirements of 61-7-105. Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

(2) (a) *Except as provided in subsection (2)(b), a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment for a term of not less than 30 days or more than 1 year less than 30 days or more than 1 year, by a fine of not less than \$100 or more than \$5,000 of not less than \$100 or more than \$5,000, or by both fine and imprisonment.*

(b) *If the accident resulted in serious bodily injury or death of any person, a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed \$50,000, or by both fine and imprisonment.*

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of a person convicted of violating this section for the period prescribed in 61-5-205.”

Approved April 5, 2007

## CHAPTER NO. 146

[SB 328]

AN ACT ESTABLISHING AN OPTIONAL PROCUREMENT EXCEPTION APPLICABLE TO THE PURCHASE OF MONTANA-PRODUCED FOOD PRODUCTS BY GOVERNMENTAL BODIES; CLARIFYING TERMINOLOGY; AMENDING SECTION 18-4-132, 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 18-4-132, MCA, is amended to read:

**“18-4-132. Application.** (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body

under any contract, except a contract exempted from this chapter by this section or by a *another* statute that provides that this chapter does not apply to the contract. This chapter applies to;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. ~~This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to; and~~

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

~~(2)(3)~~ This chapter does not apply to:

(a) *either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;*

(b) construction contracts;

~~(3)(c)~~ This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

~~(4)(d)~~ This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

~~(5)(e)~~ This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services;

~~(6)(f)~~ This chapter does not apply to employment of:

~~(a)(i)~~ a registered professional engineer, surveyor, real estate appraiser, or registered architect;

~~(b)(ii)~~ a physician, dentist, pharmacist, or other medical, dental, or health care provider;

~~(c)(iii)~~ an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

~~(d)(iv)~~ consulting actuaries;

~~(e)(v)~~ a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

~~(f)(vi)~~ a private consultant employed by the Montana state lottery;

~~(g)(vii)~~ a private investigator licensed by any jurisdiction;

~~(h)(viii)~~ a claims adjuster; or

~~(i)(ix)~~ a court reporter appointed as an independent contractor under 3-5-601;

~~(7)(g)(a)~~ This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

~~(8)(h) This chapter does not apply to the purchase or commission of art for a museum or public display; or~~

~~(9)(i) This chapter does not apply to contracting under 47-1-216 of the Montana Public Defender Act.~~

(4) (a) *Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:*

*(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;*

*(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and*

*(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.*

*(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).*

*(5) As used in this section, the following definitions apply:*

*(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.*

*(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured."*

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

**Section 3. Applicability.** [This act] applies to contracts for the purchase of food products by governmental bodies that are opened to bidding or direct purchase on or after [the effective date of this act].

Approved April 5, 2007

## CHAPTER NO. 147

[SB 385]

AN ACT CRIMINALIZING SUBJECTING ANOTHER TO INVOLUNTARY SERVITUDE AND TRAFFICKING IN PERSONS FOR INVOLUNTARY SERVITUDE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that there is a phenomenon of modern-day slavery, often termed "trafficking in persons", in which traffickers use coercive tactics to obtain and maintain the labor and services of their victims; and

WHEREAS, the Legislature is concerned that the disparate parts of the criminal code may not be clear as to their application to the phenomenon of trafficking in persons and may not reflect current understanding of slavery and trafficking in persons; and

WHEREAS, it may not be clear to prosecutors that behaviors such as kidnapping or prostitution are crimes related to trafficking in persons; and

WHEREAS, the Legislature wishes to address the problem of trafficking in persons and clarify that behaviors that are trafficking in persons be charged as such by prosecutors; and

WHEREAS, the Congress of the United States has enacted criminal provisions specific to trafficking in persons, including the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. 7101, et seq.; and

WHEREAS, having state and federal criminal laws overlap allows for more prosecutions to be brought, allows local prosecutors to respond most appropriately to crime problems in their own jurisdictions, and provides uniformity in definitions and concepts across state lines to minimize confusion as trafficking victims in state prosecutions begin to seek the victim protections available through the federal government; and

WHEREAS, the Legislature of the State of Montana finds that it is appropriate to enact statutes to prevent and punish trafficking in persons.

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

**Section 1. Subjecting another to involuntary servitude — definitions.** (1) A person commits the offense of subjecting another to involuntary servitude if the person purposely or knowingly obtains or maintains the forced labor or services of another person by any of the following actions or by threatening any of the following actions:

- (a) causing physical harm to any person;
- (b) damaging or destroying the property of any person;
- (c) physically restraining another person;
- (d) abusing the law or legal process;
- (e) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of another person;
- (f) blackmail; or
- (g) causing financial harm to any person or using financial control over any person.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of subjecting another to involuntary servitude shall be imprisoned in the state prison for a term of not more than 10 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of subjecting another to involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than \$50,000.

(3) As used in this section, the following definitions apply:



(a) "Blackmail" means an unlawful demand of money, property, or services under threat to accuse another person of a crime or to expose any secret tending to subject a person to hatred, contempt, or ridicule.

(b) "Financial harm" includes employment contracts that violate 28-2-903, taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107, and defrauding creditors as defined in 45-6-315.

(c) "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through violation of subsection (1).

(d) "Labor" means work of economic or financial value.

(e) "Maintain" means to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform that type of service.

(f) "Obtain" means to secure performance of labor or services.

(g) "Services" means an ongoing relationship between a person and the offender in which the person performs activities under the supervision of or for the benefit of the offender, including commercial sexual activity and sexually explicit performances.

**Section 2. Trafficking of persons for involuntary servitude.** (1) A person commits the offense of trafficking of persons for involuntary servitude if the person purposely or knowingly:

(a) recruits, entices, harbors, transports, provides, or obtains by any means another person, intending or knowing that the person will be subjected to involuntary servitude as described in [section 1]; or

(b) benefits financially by receiving anything of value from participation in a venture that has engaged in the offense of subjecting another to involuntary servitude as described in [section 1].

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons for involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$100,000, or both.

(b) A person convicted of the offense of trafficking of persons for involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than \$100,000.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 5, part 3, and the provisions of Title 45, chapter 5, part 3, apply to [sections 1 and 2].

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

Approved April 5, 2007

## CHAPTER NO. 148

[SB 479]

AN ACT REGULATING THE DESCRIPTION OF MONTANA HUCKLEBERRY PRODUCTS; PROVIDING PENALTIES FOR MISLABELING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Montana huckleberries grow wild in a Rocky Mountain Region that includes northwestern Montana, the panhandle area of Idaho, and the Inland Empire of northwestern Washington and have yet to be cultivated, despite attempts at Montana State University and elsewhere; and

WHEREAS, the use of the wild Montana huckleberry in food products is unregulated and in danger of being devalued by a combination of the wild Montana huckleberry with wild blueberries or other similar berries that are cultivated in other climates but that are being called wild Montana huckleberries to capitalize on the popularity of this flavorful native berry.

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

**Section 1. Content criteria for Montana huckleberry products.** (1) The label for a product that contains the terms “Montana” and “huckleberry” must meet the following criteria:

(a) The huckleberries must have been picked in the wild from a designated area in Montana that the producer has placed on file with the department. The department shall maintain the designated area information as confidential information but may respond generally to inquiries about whether a producer has listed a designated area for its huckleberry products.

(b) A product that lists only huckleberries as the berry used in the product must meet the criteria listed in subsection (1)(a).

(c) A product that lists huckleberries mixed with other berries must state the proportions and must distinguish the proportion of Montana huckleberries, as designated under subsection (1)(a), from huckleberries grown elsewhere or other types of berries.

(2) A huckleberry product that meets the criteria in subsection (1)(a) and the requirements of 7 CFR 205.207 and the labeling requirements of 7 CFR 205.300, et seq., may be labeled organic.

(3) (a) For the purposes of this section, “huckleberry” means a berry referring to various wild species of the *Vaccinium* genus, commonly referred to in this state as a huckleberry or Montana huckleberry. The berries usually are less than 5 millimeters in diameter. Among these species are *Vaccinium membranaceum* and *Vaccinium globulare*.

(b) The term does not include berries of the species *Vaccinium myrtilloides*, the *Vaccinium angustifolium*, *Vaccinium ashei*, or *Vaccinium corymbosum*.

**Section 2. Penalties for false labeling.** (1) (a) It is unlawful for a person to sell or offer for sale or list on a package label for sale either inside or outside this state any product that contains the words Montana and huckleberry in violation of the provisions of [section 1].

(b) A printer whose job does not involve the marketing of a product described in [section 1] is not liable under this section.

(2) A person who knowingly violates subsection (1)(a) is guilty of a misdemeanor and shall be punished under 46-18-212.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [sections 1 and 2].

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

Approved April 5, 2007

## CHAPTER NO. 149

[SB 485]

AN ACT REVISING THE PROHIBITION ON THE DISTRIBUTION OF MAILING LISTS FOR CERTAIN OCCUPATIONS AND PROFESSIONS REQUIRING LICENSES; AND AMENDING SECTION 2-6-109, MCA.

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

**Section 1.** Section 2-6-109, MCA, is amended to read:

**“2-6-109. (Temporary) Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, “agency” means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of ~~original documents or applications~~ records that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 or to lists of the names of employees governed by Title 39, chapter 31.

(5) This section does not prevent an agency from providing a list to persons providing preclicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees’ retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**2-6-109. (Effective October 1, 2007) Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, “agency” means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of ~~original documents or applications~~ records that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115, to lists of the names of employees governed by Title 39, chapter 31, ~~or~~ to lists of persons holding driver’s licenses or Montana identification cards provided for under 61-5-127, *or to lists of persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, 73, and 76; and Title 50, chapters 39, 72, 74, and 76.*

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees’ retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.”

Approved April 5, 2007

## CHAPTER NO. 150

[HB 92]

AN ACT MODERNIZING PUBLIC HEALTH STATUTES; PROVIDING A PUBLIC HEALTH POLICY STATEMENT; REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, LOCAL BOARDS OF HEALTH, AND LOCAL HEALTH OFFICERS; ENCOURAGING GREATER COLLABORATION AMONG AND BETWEEN ENTITIES IN THE PUBLIC HEALTH SYSTEM; AMENDING SECTIONS 50-1-101, 50-1-202, 50-2-116, 50-2-118, 50-2-130, 50-48-102, 50-53-102, 75-5-305, 76-4-125, AND 76-4-133, MCA; AND REPEALING SECTION 50-2-101, MCA.

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

**Section 1. Policy — purpose.** (1) It is the policy of the state of Montana that the health of the public be protected and promoted to the extent practicable through the public health system while respecting individual rights to dignity, privacy, and nondiscrimination.

(2) The purpose of Montana's public health system is to provide leadership and to protect and promote the public's health by:

- (a) promoting conditions in which people can be healthy;
- (b) providing or promoting the provision of public health services and functions, including:
  - (i) monitoring health status to identify and recommend solutions to community health problems;
  - (ii) investigating and diagnosing health problems and health hazards in the community;
  - (iii) informing and educating individuals about health issues;
  - (iv) coordinating public and private sector collaboration and action to identify and solve health problems;
  - (v) developing policies, plans, and programs that support individual and community health efforts;
  - (vi) implementing and enforcing laws and regulations that protect health and ensure safety;
  - (vii) linking individuals to needed personal health services and assisting with needed health care when otherwise unavailable;
  - (viii) to the extent practicable, providing a competent public health workforce;
  - (ix) evaluating effectiveness, accessibility, and quality of personal and population-based health services; and
  - (x) to the extent that resources are available, conducting research for new insights on and innovative solutions to health problems;
- (c) encouraging collaboration among public and private sector partners in the public health system;
- (d) seeking adequate funding and other resources to provide public health services and functions or accomplish public health system goals through public or private sources;

(e) striving to ensure that public health services and functions are provided and public health powers are used based upon the best available scientific evidence; and

(f) implementing the role of public health services and functions, health promotion, and preventive health services within the state health care system.

(3) Title 50, chapter 2, and this chapter may not be construed to require an individual or agency within the public health system to provide specific health services or to mandate state public health agencies and local public health agencies to implement unfunded programs.

**Section 2. Collaboration and relationships within public health system.** (1) In general, the department and local public health agencies shall seek to establish working relationships with federal, tribal, other state or local public health agencies, and other public sector partners engaged in the provision of public health services and functions within the public health system.

(2) The department may enter an agreement with any federal agency to coordinate the provision of public health services and functions.

(3) The department may enter an agreement with any other state or any agencies in any other state to coordinate the provision of public health services and functions among the states that are parties to the agreement.

(4) Any local public health agency may enter agreements with other local public health agencies in the state to coordinate the provision of public health services and functions consistent with Title 50, chapter 2, and this chapter. The local public health agency shall submit any agreement entered into pursuant to this section to the department.

(5) A local public health agency whose jurisdiction extends to a state border may form an agreement with an adjoining state or a municipality in the other state to coordinate the provision of public health services and functions. The local public health agency shall submit any agreement entered into pursuant to this section to the department for prior approval.

(6) The department or local public health agencies may form agreements with tribes and tribal public health agencies in the state to coordinate the provision of public health services and functions or to promote cooperation in addressing specific public health needs of persons living on Indian reservations or Indians who reside outside the boundaries of Indian reservations.

(7) (a) Public health districts, consisting of two or more local public health agencies, may be created by interlocal agreement, as provided in Title 7, chapter 11, part 1, or as a district board of health under 50-2-107 for the purpose of improving the provision of public health services and functions for the affected population. A public health district created under this subsection (7) may include tribal health agencies.

(b) A public health district created under this subsection (7) must consist of the entire area of the combined local public health agencies and tribal health agencies and must be governed in accordance with state law.

**Section 3.** Section 50-1-101, MCA, is amended to read:

**“50-1-101. Definitions.** Unless the context indicates otherwise, in *chapter 2 and* this chapter, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) *"Condition of public health importance" means a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.*

(2)(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(3)(4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(5) *"Institutional controls" means legal or regulatory mechanisms designed to protect public health and safety that:*

(a) *limit access to or limit or condition the use of environmentally contaminated property or media;*

(b) *provide for the protection or preservation of environmental cleanup measures; or*

(c) *inform the public that property or media is or may be environmentally contaminated.*

(4)(6) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(7) "Local board of health" or "local board" means a county, city, city-county, or district board of health.

(8) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term may include an authorized representative of the local health officer.

(9) "Local public health agency" means an organization operated by a local government in the state, including local boards of health or local health officers, that principally acts to protect or preserve the public health.

(10) "Physician" has the meaning provided in 37-3-102.

(11) "Public health services and functions" means those services and functions necessary to promote the conditions in which the population can be healthy and safe, including:

(a) *population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality; or*

(b) *the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and*

*epidemiological research, developing public health policy, and responding to public health needs and emergencies.*

(12) *“Public health system” means state and local public health agencies and their public and private sector partners.*

(5)(13) *“Quarantine” means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to prevent or limit the transmission of the communicable disease to nonquarantined individuals.*

(14) *“Screening” means diagnostic or investigative analysis or medical procedures that determine the presence or absence of or exposure to a condition of public health importance or the condition’s precursor in an individual.*

(15) *“Testing” has the same meaning as screening.”*

**Section 4.** Section 50-1-202, MCA, is amended to read:

**“50-1-202. General powers and duties.** (1) *The In order to carry out the purposes of the public health system to protect and promote the public health, the department, in collaboration with federal, state, and local partners, shall:*

(a) *make inspections for conditions of public health importance and issue written orders for correction, destruction, or removal of the condition;*

(1) ~~shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records;~~

(2)(b) ~~shall make investigations, disseminate information, and make recommendations for control of diseases and improvement other conditions of public health to persons, groups, or the public importance;~~

(3)(c) ~~at the request of the governor, shall accept funds for and administer any federal health program for which responsibilities are delegated to states;~~

(4) ~~shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;~~

(5) ~~after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;~~

(6) ~~shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;~~

(7) ~~shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;~~

(8) ~~shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;~~

(9) ~~shall conduct health education programs;~~



~~(10) shall provide consultation to school and local community health nurses in the performance of their duties;~~

~~(11) shall consult with the superintendent of public instruction on health measures for schools;~~

~~(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:~~

~~(a) diagnosis;~~

~~(b) medical, surgical, and corrective treatment;~~

~~(c) aftercare and related services; and~~

~~(d) eligibility;~~

~~(13) shall provide consultation to local boards of health;~~

~~(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;~~

~~(15) shall accept and expend federal funds available for public health services;~~

*(d) identify, assess, prevent, and mitigate conditions of public health importance through:*

*(i) epidemiological tracking and investigation;*

*(ii) screening and testing programs;*

*(iii) isolation and quarantine measures;*

*(iv) treatment;*

*(v) abatement of public health nuisances;*

*(vi) inspections;*

*(vii) collecting and maintaining health information; or*

*(viii) other public health measures as allowed by law;*

*(e) promote efforts among public and private sector entities to develop and fund programs or initiatives that identify and ameliorate health problems;*

*(f) develop and promote training for members of the public health workforce;*

*(g) bring and pursue actions necessary to abate, restrain, or prosecute the violation of public health laws and rules;*

*(h) advise state agencies on the following as they relate to public buildings and facilities:*

*(i) location, drainage, water supply, water quality, heating, plumbing, sewer systems, and ventilation; and*

*(ii) the disposal of infectious or hazardous wastes;*

*(i) develop, administer, and promote activities for the protection and improvement of oral health;*

*(j) develop, adopt, and administer rules setting standards for the operation of programs to protect the health of mothers and children, including programs for nutrition, family planning services, improved pregnancy outcome, and programs authorized by Title X of the federal Public Health Service Act, 42 U.S.C. 300a, et seq., and Title V of the federal Social Security Act, 42 U.S.C. 501 through 510;*

(k) *conduct health education programs;*

(l) *provide consultation to school and local public health personnel and consult with the superintendent of public instruction on conditions of public health importance for schools;*

(m) *develop, adopt, and administer rules setting standards for a program to provide services to children with special health care needs, including standards for:*

(i) *diagnosis;*

(ii) *medical, surgical, and corrective treatment;*

(iii) *aftercare and related services; and*

(iv) *eligibility;*

(n) *provide consultation to local boards of health;*

(16) *must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;*

(17) *shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.*

(o) *promote cooperation and formal collaborative agreements between the state and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, and other public health matters addressed in this title;*

(18)(p) *shall adopt and enforce rules regarding:*

(i) *the reporting and control of communicable diseases and other conditions of public health importance;*

(ii) *the imposition of fees for testing, screening, and other services performed by the state laboratory;*

(19)(iii) *shall adopt and enforce rules regarding the transportation of dead human bodies;*

(20)(iv) *shall adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; and*

(v) *public health requirements for school sites, including water supply and quality, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of pupils, teachers, and others; and*

(21)(q) *shall enact or take measures to prevent and alleviate injury threats to the public health from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death.*

(2) *The department:*

(a) *has the power to use personnel of local public health agencies to assist in the administration of laws relating to public health services and functions; and*

(b) *may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."*

**Section 5.** Section 50-2-116, MCA, is amended to read:

**“50-2-116. Powers and duties of local boards of health.** (1) ~~Local boards~~ *In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:*

- (a) *appoint and fix the salary of a local health officer who is:*
  - (i) a physician; ~~or~~
  - (ii) a person with a master’s degree in public health; or
  - (iii) ~~the a person with~~ *equivalent education and with appropriate experience, as determined by the department, and shall fix the health officer’s salary;*
- (b) *elect a presiding officer and other necessary officers;*
- (c) *employ necessary qualified staff;*
- (d) *adopt bylaws to govern meetings;*
- (e) *hold regular meetings at least quarterly and hold special meetings as necessary;*
- (f) ~~supervise destruction and removal of all sources of filth that cause disease; identify, assess, prevent, and ameliorate conditions of public health importance through:~~
  - (i) *epidemiological tracking and investigation;*
  - (ii) *screening and testing;*
  - (iii) *isolation and quarantine measures;*
  - (iv) *diagnosis, treatment, and case management;*
  - (v) *abatement of public health nuisances;*
  - (vi) *inspections;*
  - (vii) *collecting and maintaining health information;*
  - (viii) *education and training of health professionals; or*
  - (ix) *other public health measures as allowed by law;*
- (g) ~~guard against~~ *protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;*
- (h) *supervise or make inspections of public establishments for sanitary for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;*
  - (i) *bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;*
  - (j) *identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.*
  - (k) *subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that is are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for*

granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards of health may:

~~(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;~~

~~(b) furnish treatment for persons who have communicable diseases;~~

~~(c) prohibit the use of places that are infected with communicable diseases;~~

~~(d) require and provide means for disinfecting places that are infected with communicable diseases;~~

~~(e)(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;~~

~~(f) contract with another local board for all or a part of local health services;~~

~~(g) reimburse local health officers for necessary expenses incurred in official duties;~~

~~(h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;~~

~~(i)(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities; The fees must be deposited with the county treasurer.~~

~~(j)(c) adopt rules regulations that do not conflict with rules adopted by the department:~~

~~(i) for the control of communicable diseases;~~

~~(ii) for the removal of filth that might cause disease or adversely affect public health;~~

~~(iii) subject to the provisions of 50-2-130, on for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;~~

~~(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and~~

~~(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401;~~

~~(k)(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, adopt necessary regulations for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments; and~~

~~(l)(v) adopt regulations for the establishment of institutional controls that have been selected or approved by the:~~

~~(i)(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or~~

(ii)(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.”

**Section 6.** Section 50-2-118, MCA, is amended to read:

**“50-2-118. Powers and duties of local health officers.** ~~(1) Local~~ In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers ~~or their authorized representatives or their authorized representatives~~ shall:

(a)(1) make inspections for sanitary conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

(b) ~~as directed by the local board, issue written orders for the destruction and removal of filth that might cause disease;~~

(c)(2) ~~with written approval of the department, order take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate closed during epidemics and canceling events;~~

(d)(3) ~~on forms provided by the department, report communicable diseases to the department each week as required by rule;~~

(e) ~~before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of activities, on forms and containing information required by the department;~~

(f) ~~before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) to the department;~~

(g)(4) establish and maintain quarantine and isolation measures as enacted adopted by the local board of health; and

(h) ~~as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;~~

(i) ~~notify the department of the local health officer’s appointment and changes in membership of the local board;~~

(j)(5) file a complaint *pursue action* with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) ~~validate state licenses issued by the department in accordance with chapters 50 through 53 and 57 of this title.~~

(2) ~~With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.~~

(3) ~~A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.~~

(4) ~~A local health officer who is not a physician may not act as a physician to anyone."~~

**Section 7.** Section 50-2-130, MCA, is amended to read:

**"50-2-130. Local regulations no more stringent than state regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under ~~50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k) 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)~~ that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement ~~50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k) 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)~~ that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

**Section 8.** Section 50-48-102, MCA, is amended to read:

**"50-48-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2.

(5) "Local health officer" has the meaning provided in ~~50-2-101~~ *50-1-101*.

(6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

(7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of body piercing or tattooing.

(8) "Regulatory authority" means the department of public health and human services, the local board of health, the local health officer, or the local sanitarian.

(9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as permanent lip coloring and permanent eyeliner.

(b) The term does not include:

(i) the practice of electrology as defined in 37-31-101; or

(ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes."

**Section 9.** Section 50-53-102, MCA, is amended to read:

**"50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in ~~50-2-101~~ *50-1-101*.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools and spas. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use.

(7) "Spa" means an artificial pool designed for recreational bathing or therapeutic use and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or Jacuzzi-type whirlpool bath.

(8) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis."

**Section 10.** Section 75-5-305, MCA, is amended to read:

**"75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals.** (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(4)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

**Section 11.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Review of subdivision application — land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a



subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.”

**Section 12.** Section 76-4-133, MCA, is amended to read:

**“76-4-133. Installation inspection.** A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in ~~50-2-101~~ 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval.”

**Section 13. Repealer.** Section 50-2-101, MCA, is repealed.

**Section 14. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 1, and the provisions of Title 50, chapter 1, apply to [sections 1 and 2].

**Section 15. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 5, 2007

## CHAPTER NO. 151

[HB 400]

AN ACT REQUIRING A BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO APPOINT ONE OF ITS MEMBERS OR ASSOCIATE MEMBERS TO A CITY-COUNTY PLANNING BOARD; PROVIDING THAT THE APPOINTMENT IS SUBJECT TO APPROVAL OF THE CITY-COUNTY PLANNING BOARD; PROVIDING THAT AN ASSOCIATE MEMBER OF A CONSERVATION DISTRICT DESIGNATED BY THE GOVERNING BOARD MAY BE APPOINTED TO A COUNTY PLANNING BOARD; AMENDING SECTIONS 76-1-201 AND 76-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-1-201, MCA, is amended to read:

**“76-1-201. Membership of city-county planning board.** (1) Except as provided in subsection (2), a city-county planning board ~~shall consist~~ consists of ~~not less~~ no fewer than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) ~~the ninth member to be selected by the eight officers and citizen members hereinabove provided for from the members of~~ *to be appointed by the board of supervisors of a conservation district provided for in 76-15-311 from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).*

(2) Subsection (1)(e) does not apply if there is no member *or associate member* of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In ~~such~~ *that* case, the ninth member of the city-county planning board ~~shall must~~ be selected by the eight officers and citizen members ~~hereinabove provided for pursuant to subsections (1)(a) through (1)(d)~~, with the consent and approval of the board of county commissioners and the city council.”

**Section 2.** Section 76-1-211, MCA, is amended to read:

**“76-1-211. Membership of county planning board.** (1) County planning boards ~~shall~~ consist of not less than five members appointed by the board of county commissioners. At least one member of ~~any~~ *a* county planning board existing on or formed after July 1, 1973, ~~shall must~~ be a member of the governing board of a conservation district as provided for in chapter 15, *or an associate member of a conservation district designated by the governing board of a conservation district, or a member of a state cooperative grazing district if officers of either of the districts or the designated associate member of a conservation district* reside in ~~said~~ the county.

(2) ~~In the event that any~~ *If* a city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing ~~such~~ *the* cities or towns ~~shall must~~ be appointed by the respective city councils.”

**Section 3. Transition.** (1) The members of a city-county planning board, established pursuant to 76-1-201, or a county planning board, established pursuant to 76-1-211, who are members on [the effective date of this act] may continue to serve the remainder of their terms as described under the provisions of 76-1-203.

(2) Appointments to a city-county planning board after [the effective date of this act] must be made as described in 76-1-201. Appointments to a county planning board after [the effective date of this act] must be made as described in 76-1-211.

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

Approved April 6, 2007

## CHAPTER NO. 152

[HB 409]

AN ACT PROHIBITING CERTAIN UNFAIR PRACTICES BY MOTORSPORTS VEHICLE MANUFACTURERS; DEFINING “MOTORSPORTS VEHICLE”; AND PROVIDING FOR INJUNCTIVE RELIEF AND DAMAGES.

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

**Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) “Actual price” means the price to be paid by the dealer less any incentive paid by the manufacturer, whether paid to the dealer or the ultimate purchaser of the motorsports vehicle.

(2) “Control” or “controlling” means:

(a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary; or

(b) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(3) “Line-make” means a type of motorsports vehicle produced by a manufacturer.

(4) “Motorsports vehicle” means a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, or a quadricycle as defined in 61-1-101.

(5) “Operate” means to manage a dealership, whether directly or indirectly.

(6) “Own” or “ownership” means to hold the beneficial ownership of 1% or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(7) “Person” has the meaning provided in 30-14-102.

**Section 2. Unfair trade practices — relationship between motorsports vehicle manufacturers and dealers.** In addition to the prohibited practices provided for in 61-4-208 and notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative may not:

(1) discriminate between dealers by selling or offering to sell a like motorsports vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(2) discriminate between dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(3) discriminate between dealers by using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(4) discriminate between dealers by adopting a method or changing an existing method for the allocation, scheduling, or delivery of new motorsports

vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer shall disclose in writing to the dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles.

(5) give preferential treatment to some dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new vehicle, parts, or accessories, if the motorsports vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(6) except as provided in 61-4-208(3)(b) or (3)(c), compete with a dealer by acting in the capacity of a dealer or by owning, operating, or controlling, whether directly or indirectly, a dealership in this state;

(7) compete with a dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the manufacturer's new motorsports vehicle warranty and extended warranty. However, a manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the manufacturer.

(8) use confidential or proprietary information obtained from a dealer to unfairly compete with the dealer without the prior written consent of the dealer. For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

(9) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested or to buy, order, or pay anything of value for the items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(10) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter;

(11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;

(12) prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer;

(13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;

(14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written

notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.

(15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:

- (a) that have been voluntarily requested or ordered by the dealer; and
- (b) required by law;

(16) fail to hold harmless and indemnify a dealer against losses, including lawsuits and court costs, arising from:

(a) the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the manufacturer on the manufacture or performance of a motorsports vehicle without negligence on the part of the dealer;

(b) damage to merchandise in transit where the manufacturer specifies the carrier;

(c) the manufacturer's failure to jointly defend product liability suits concerning the motorsports vehicle, part, or accessory provided to the dealer; or

- (d) any other act performed by the manufacturer;

(17) unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

(18) fail to pay to a dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the manufacturer on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles;

(19) deny a dealer the right of free association with any other dealer for any lawful purpose;

(20) charge increased prices without having given written notice to the dealer at least 15 days before the effective date of the price increases;

(21) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than their franchised dealers;

(22) require or coerce a dealer to sell, assign, or transfer a retail sales installment contract or require the dealer to act as an agent for a manufacturer in the securing of a promissory note, a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. The manufacturer may not condition delivery of any motorsports vehicle, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies.

(23) require or coerce a dealer to grant a manufacturer a right of first refusal or other preference to purchase the dealer's franchise or place of business, or both;

(24) deny a dealer the right of lawfully selling or offering to sell motorsports vehicles in another country;

(25) require a dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(26) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;

(27) require a dealer to maintain an inventory in excess of the inventory needed for period of 90 days; or

(28) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

**Section 3. Injunction — damages — venue.** (1) A person who is injured by a violation of [section 2] may maintain an action to enjoin a continuance of an act in violation of [section 2] and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of [section 2], shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) The proper place for trial of an action based on a claim of a violation of [section 2] is the district court for Lewis and Clark County or the county in which the alleged violation occurred.

**Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 3].

Approved April 6, 2007

## CHAPTER NO. 153

[HB 503]

AN ACT MAKING PERMANENT THE PROVISIONS ALLOWING CERTAIN AGENCIES AND TECHNICIANS TO BE CERTIFIED TO PERFORM EUTHANASIA ON ANIMALS; AND REPEALING SECTION 11, CHAPTER 60, LAWS OF 2003.

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

**Section 1. Repealer.** Section 11, Chapter 60, Laws of 2003, is repealed.

Approved April 6, 2007

## CHAPTER NO. 154

[HB 510]

AN ACT ALLOWING A CITY COUNCIL OR A BOARD OF COUNTY COMMISSIONERS TO ASSESS THE COST OF A SPECIAL IMPROVEMENT LIGHTING DISTRICT EQUALLY AGAINST EACH LOT OR PARCEL IN THE DISTRICT; AND AMENDING SECTIONS 7-12-2202 AND 7-12-4323, MCA.

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

**Section 1.** Section 7-12-2202, MCA, is amended to read:

**“7-12-2202. Apportionment of costs of maintaining lighting system.**

(1) The cost of the maintenance and operating service to ~~said a lighting~~ rural improvement district may be apportioned among the various tracts of land within ~~said improvement the~~ district:

(a) in proportion to the assessed value of ~~said the~~ lands within ~~said improvement the~~ district, as determined by the board of county commissioners;

(b) *by assessing the cost equally against each of the lots or parcels located within the district;*

~~(b)(c)~~ at the option of ~~said the~~ board and as determined by ~~said the~~ board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

~~(e)(d)~~ in proportion to the area, as determined by ~~said the~~ board, of that portion of each tract included in the district.

(2) (a) Before the first Monday of September of each year, the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining ~~said the~~ lighting system. The ~~same shall levy and assessment must be~~ proportioned against the ~~several~~ tracts of land in ~~said the~~ district as provided in this part.

(b) ~~Said The~~ resolution levying assessments to defray the cost of maintenance ~~shall must be~~ prepared and certified to in the ~~same~~ manner as ~~near as may be to~~ a resolution levying assessments for making, constructing, and installing the improvements in ~~said special improvement districts the~~ district.”

**Section 2.** Section 7-12-4323, MCA, is amended to read:

**“7-12-4323. Assessment of costs — area or taxable valuation option — equal assessment option.** (1) The city council may assess the entire cost of ~~such the~~ lighting improvement against the entire district, each lot or parcel of land within ~~such the~~ district to be assessed for that part of the whole cost ~~which that~~ its:

(a) area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; or

(b) taxable valuation, including improvements, bears to the taxable valuation of the entire district.

(2) *The city council may assess the cost equally against each of the lots or parcels located within the district.*

~~(2)(3)~~ The council, in its discretion, ~~shall have the power to~~ may 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 the~~ costs within the amount of the assessment to be paid by the property in the district.

~~(3)(4)~~ In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of ~~any a~~ block, the council may, in the resolution creating ~~any a~~ district, provide that whenever any of the improvements provided in this part ~~shall be~~ are located along ~~any a~~ side street or bordering or abutting upon the side of ~~any a~~ corner lot of ~~any a~~ block, the amount of the assessment against the property in ~~such the~~ district to defray the cost of



~~such the improvements shall be so~~ *must be* assessed so that each square foot of the land embraced within ~~any such the~~ corner lot ~~shall bear~~ *bears* double the amount of the cost of ~~such the~~ improvement that a square foot of ~~any an~~ inside lot ~~shall bear bears.~~"

Approved April 6, 2007

## CHAPTER NO. 155

[HB 521]

AN ACT REVISING THE DEFINITION OF "OCCUPIED STRUCTURE" IN THE CRIMINAL LAWS TO INCLUDE OUTBUILDINGS ADJACENT TO OR IN CLOSE PROXIMITY TO OCCUPIED STRUCTURES; AND AMENDING SECTION 45-2-101, MCA.

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

**Section 1.** Section 45-2-101, MCA, is amended to read:

**"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) “Deviate sexual relations” means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(22) “Document” means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) “Felony” means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) “Forcible felony” means a felony that involves the use or threat of physical force or violence against any individual.

(25) A “frisk” is a search by an external patting of a person’s clothing.

(26) “Government” includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) “Harm” means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A “house of prostitution” means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) “Human being” means a person who has been born and is alive.

(30) An “illegal article” is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) “Inmate” means a person who is confined in a correctional institution.

(32) (a) “Intoxicating substance” means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An “involuntary act” means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) “Juror” means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term “juror” also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) “Knowingly”—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person’s own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person’s conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as “knowing” or “with knowledge”, have the same meaning.

(36) “Medicaid” means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) “Medicaid agency” has the meaning in 53-6-155.

(38) “Medicaid benefit” means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) “Medicaid claim” means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) “Mentally defective” means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person’s own conduct.

(41) “Mentally incapacitated” means that a person is rendered temporarily incapable of appreciating or controlling the person’s own conduct as a result of the influence of an intoxicating substance.

(42) “Misdemeanor” means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) “Negligently”—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation. “Gross deviation” means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as “negligent” and “with negligence”, have the same meaning.

(44) “Nolo contendere” means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) “Obtain” means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, *including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment*. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) “Purposely”—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person’s conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as “purpose” and “with the purpose”, have the same meaning.

(66) (a) “Serious bodily injury” means bodily injury that:

- (i) creates a substantial risk of death;
- (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or
- (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) “Sexual contact” means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

- (a) cause bodily injury to or humiliate, harass, or degrade another; or
- (b) arouse or gratify the sexual response or desire of either party.

(68) (a) “Sexual intercourse” means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

- (i) cause bodily injury or humiliate, harass, or degrade; or
- (ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) “Solicit” or “solicitation” means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) “State” or “this state” means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) “Statute” means an act of the legislature of this state.

(72) “Stolen property” means property over which control has been obtained by theft.

(73) A “stop” is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer’s presence.

(74) “Tamper” means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) “Telephone” means any type of telephone, including but not limited to a corded, unrecorded, cellular, or satellite telephone.

(76) “Threat” means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;
- (c) commit a criminal offense;
- (d) accuse a person of a criminal offense;
- (e) expose a person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of a person;
- (g) reveal information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;
- (i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or
- (j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.



(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Approved April 6, 2007

## CHAPTER NO. 156

[HB 555]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE INFORMATION IN THE HOUSEHOLD HAZARDOUS WASTE PUBLIC EDUCATION PROGRAM ABOUT RECYCLING OR THE SAFE DISPOSAL OF ELECTRONIC WASTE; AND AMENDING SECTION 75-10-215, MCA.

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

**Section 1.** Section 75-10-215, MCA, is amended to read:

**"75-10-215. Statewide household hazardous waste public education program.** The department shall implement a statewide household hazardous waste public education program. The program must include but is not limited to providing information about:

(1) alternatives to disposal of household hazardous waste at municipal solid waste landfills and other disposal sites;

(2) *options for recycling or the safe disposal of electronic waste, including but not limited to video, audio, and telecommunications equipment, computers, and household appliances;*

(3) methods of reusing or recycling household hazardous waste; and

~~(3)~~(4) alternatives to the use of products that lead to the generation of household hazardous waste."

Approved April 6, 2007

## CHAPTER NO. 157

[HB 570]

AN ACT EXPANDING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT; AUTHORIZING THE USE OF THE FEDERAL WRITE-IN ABSENTEE BALLOT FOR ANY ELECTION; CLARIFYING REGULAR ABSENTEE BALLOT AND FEDERAL WRITE-IN ABSENTEE BALLOT PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-21-103, 13-21-201, 13-21-202, 13-21-205, 13-21-206, AND 13-21-210, MCA; AND REPEALING SECTION 13-21-204, MCA.

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

**Section 1.** Section 13-21-103, MCA, is amended to read:

**"13-21-103. Secretary of state designated as single point of contact — rulemaking.** (1) The office of the secretary of state is the state's single point of contact responsible for providing information regarding voter registration and absentee ballot procedures to be used by a United States elector.

(2) The secretary of state shall, with the assistance of local election administrators, compile, make available to the general public, or forward to appropriate federal authorities any reports or information required to be compiled, made available, or forwarded pursuant to federal law.

(3) *The secretary of state may adopt rules to implement the provisions of this chapter.*”

**Section 2.** Section 13-21-201, MCA, is amended to read:

**“13-21-201. Registration of United States electors — simultaneous application for absentee ballot.** (1) A United States elector may register with the election administrator in the elector’s county of residence by properly completing, signing, and returning:

(a) the voter registration form;

(b) the federal post card application; or

(c) the federal write-in absentee ballot ~~transmission envelope~~ *as provided in 13-21-205.*

(2) A registration application under ~~this section~~ *subsection (1)(a) or (1)(b)* must be received by the election administrator not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210.”

**Section 3.** Section 13-21-202, MCA, is amended to read:

**“13-21-202. Classification of applications for regular absentee ballots — notification of elector.** (1) Upon receipt by the election administrator of an application *by a United States elector for a regular absentee ballot* pursuant to 13-13-212 or 13-21-210, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the federal post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered. This information is sufficient to meet any identification requirements provided by law for an elector.

(c) send to the applicant by the fastest mail service available, which may include facsimile transmission or electronic mail, a notice that the elector has been registered and informing the elector that a *regular absentee* ballot is enclosed or that the elector will be mailed ~~an~~ *a regular* absentee ballot for that election or for the next election in which the elector is entitled to vote under subsection (1) or, if the application is rejected, a notice that the application has been rejected and the reasons for the rejection.

(2) The election administrator may use photocopies of the federal post card application to complete all necessary records.”

**Section 4.** Section 13-21-205, MCA, is amended to read:

**“13-21-205. Procedure for voting federal Federal write-in absentee ballot.** (1) *A United States elector may register, if not already registered, and vote in any election by completing, signing, and returning a federal write-in absentee ballot and meeting the requirements in 13-21-206.*

~~(1)~~(2) (a) A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party *for which the elector is voting*. A written designation of the political party must be counted as a vote for the candidate of that party.

(b) (i) *Except as provided in subsection (2)(b)(ii), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.*

(ii) *If the elector is voting in a primary election, the elector shall identify the elector’s political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector’s identified party is void and may not be counted.*

(3) A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate’s name.

~~(2)~~(4) If the elector receives the regular absentee ballot ~~for the federal general election~~ after the elector has voted and mailed a federal write-in absentee ballot, the elector may vote and return the regular absentee ballot.”

**Section 5.** Section 13-21-206, MCA, is amended to read:

**“13-21-206. Counting of federal write-in absentee ballots.** (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

~~(a) a valid application was made by the elector pursuant to 13-21-210;~~

(a) *the elector’s voter registration and identification information is sufficient to determine that the elector is eligible to vote in the election;*

(b) *the ballot is not received before regular absentee ballots have been printed pursuant to 13-13-205;*

~~(b)~~(c) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

~~(e)~~(d) the ballot is sent by 8 p.m. on election day and is received by 3 p.m. on the Monday following the election.

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed.”

**Section 6.** Section 13-21-210, MCA, is amended to read:

**“13-21-210. Application for absentee ballots.** (1) A United States elector may apply for a regular absentee ~~ballots~~ ballot as follows:

(a) by making a written request, which must include the elector’s birth date and signature; or

(b) by properly completing, signing, and returning to the election administrator the federal post card application; or

~~(c) by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope.~~

(2) An application for a ~~federal write-in~~ *regular* absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application *for a regular absentee ballot that is* received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections.

(4) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in this subsection as soon as the ballots ~~become available~~ *are printed.*"

**Section 7. Repealer.** Section 13-21-204, MCA, is repealed.

**Section 8. 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.

Approved April 6, 2007

## CHAPTER NO. 158

[HB 579]

AN ACT CLARIFYING THE LAWS RELATING TO THE DISBURSEMENT OF SURPLUS FUNDS FROM A TRUSTEE'S SALE; AND AMENDING SECTION 71-1-316, MCA.

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

**Section 1.** Section 71-1-316, MCA, is amended to read:

**"71-1-316. Disposition of proceeds of sale.** (1) The trustee shall apply the proceeds of the trustee's sale as follows:

(1)~~(a)~~ to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and ~~attorney's attorney~~ fees;

(2)~~(b)~~ to the obligation secured by the trust indenture;

(3)~~(c)~~ the surplus, if any, to the person or persons legally entitled ~~thereto~~ *to the surplus*, or the trustee, in ~~his~~ *the trustee's* discretion, may deposit ~~such~~ the surplus with the clerk and recorder of the county in which the sale took place.

(2) Upon ~~depositing such the deposit of the surplus~~, the trustee ~~shall be~~ *is* discharged from all further responsibility ~~therefor and the~~ *for the surplus*. The clerk and recorder shall deposit the ~~same surplus~~ with the county treasurer ~~subject to~~. *The county treasurer shall pay the surplus funds as provided in the a written order of from the district court of such county.*"

Approved April 6, 2007

## CHAPTER NO. 159

[HB 596]

AN ACT INCREASING THE REPAYMENT PERIOD FOR ASSESSMENTS IMPOSED AGAINST OWNERS OF LAND FOR THE CONSTRUCTION OF CERTAIN SIDEWALKS, CURBS, GUTTERS, OR ALLEY APPROACHES IN

CITIES OR TOWNS; AMENDING SECTION 7-14-4110, 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 7-14-4110, MCA, is amended to read:

**“7-14-4110. Assessments for costs.** (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination ~~thereof of sidewalks, curbs, or gutters~~ or alley approach may be spread over a ~~term of period~~ not to exceed ~~12~~ 20 years. ~~payment to~~ *Payments must* be made in equal annual installments.

(2) ~~The~~ *Before the first Monday of October each year, the city council shall, annually before the first Monday of October, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination thereof of sidewalks, curbs, or gutters have been constructed under orders of the city council or each lot or parcel of land having access to said the property via by way of the alley approach which that has been constructed under orders of the city council. Said The resolution levying such the assessment shall must be in every manner prepared and certified in the same manner as resolutions levying assessments for the making of improvements in special improvement districts.”*

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

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to city or town council orders for the construction of sidewalks, curbs, gutters, or alley approaches occurring after December 31, 2006.

Approved April 6, 2007

## CHAPTER NO. 160

[HB 703]

AN ACT ESTABLISHING APPLICATION REQUIREMENTS FOR AN EASEMENT ON STATE LAND FOR A REGIONAL WATER AUTHORITY; AND AMENDING SECTION 77-2-102, MCA.

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

**Section 1.** Section 77-2-102, MCA, is amended to read:

**“77-2-102. Application for easement.** (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) ~~and (4)~~ *through (5)*, the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department,

these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of electrical energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted.

(5) (a) *If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way.*

(b) *The application provided for in subsection (5)(a) must be accompanied by electronic global positioning system data in the Montana coordinate system, easement location depicted on a topographical map to a scale of 1:24,000, easement coordinates, and the quantity of land taken in each quarter-quarter section.”*

Approved April 6, 2007

## CHAPTER NO. 161

[HB 717]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE, BOWDOIN NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. United States of America, fish and wildlife service, Bowdoin national wildlife refuge — Montana compact ratified.** The compact entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Bowdoin National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on [date of filing] is ratified. The compact is as follows:

## ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the Bowdoin National Wildlife Refuge; see United States v. Aageson, No. CV-79-GF (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see “the McCarran Amendment”, 43 U.S.C. 666(a)(1) (1952);

WHEREAS, the State of Montana in 1979 pursuant to Title 85, chapter 2, of the Montana Code Annotated (MCA), commenced a general adjudication of the rights to use water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Bowdoin National Wildlife Refuge in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992), inter alia;

WHEREAS, it is in the best interest of all Parties that the water rights claims for the Bowdoin National Wildlife Refuge be settled through agreement between the State of Montana and the United States;

NOW, THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the Bowdoin National Wildlife Refuge.

## ARTICLE II - DEFINITIONS

For purposes of this compact only, the following definitions shall apply:

(1) “Abstract” means the copy of the document entitled “Abstract of U.S. Fish and Wildlife Service Water Rights” referenced in this Compact as Appendix 1.

(2) “Acre-Foot” or “Acre-Feet” or “AF” means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) “Acre-Foot per Year” or “Acre-Feet per Year” or “AFY” means an annual quantity of water measured in Acre-Feet over a period of a year.

(4) “Aquifer” means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(5) “Arising Under State Law” means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.

(6) “Beaver Creek Basin” means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek, Little Warm Creek, and Black Coulee, to its confluence with the Milk River.

(7) “Bowdoin National Wildlife Refuge” or “Refuge” means those lands and interests in lands located in Montana that were acquired pursuant to or withdrawn and reserved by Executive Order No. 7295 of February 14, 1936, and Executive Order No. 8592 of November 12, 1940, for purposes of providing a refuge and breeding ground for migratory bird and other wildlife.

(8) “Change in Use” means, as applied to the Refuge water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.

(9) “Consumptive Use” means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.

(10) “Deep Ground Water” means water extracted from any deep regional Aquifer that is located in any geologic formation dating from the Jurassic Period or older.

(11) “Department” means the Montana Department of Natural Resources and Conservation or any successor agency.

(12) “Effective Date” means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice or on which the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is executed by the State of Montana and the United States Fish and Wildlife Service, whichever date is latest.

(13) “FWS” means the United States Fish and Wildlife Service of the United States Department of the Interior or any successor agency.

(14) “Ground Water” means any water that is beneath the surface of the ground.

(15) “Jurassic Period” means the middle period of the Mesozoic era, spanning the time between approximately 213 million and 145 million years before the Effective Date of this Compact, as identified on the geologic table attached hereto as Appendix 4.

(16) “Milk River Basin” means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40JW, 40JE, 40K, 40L, 40M, 40N, and 40O, as those Basin names may be modified by the Montana Water Court from time to time, and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.

(17) “Party” or “Parties” means the State of Montana, the United States of America, or both.

(18) “Person” or “Persons” means an individual or individuals or any other entity, public or private, including the State, a tribe, and the United States and all officers, agents, and departments thereof.



(19) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(20) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

### ARTICLE III - REFUGE WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuge. All water rights described in this Article are subject to Article IV of this Compact as well as any specific additional conditions set forth below.

#### A. Quantification.

The United States shall have the right to water from the following sources:

##### 1. Natural Flow.

Subject to the provisions of Article III.B.2, the United States has the right to the surface flow in Basin 40M that drains naturally into the Refuge after satisfaction of the following water rights Arising Under State Law:

(a) all water rights Arising Under State Law with a priority date before the Effective Date of this Compact;

(b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and

(c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

##### 2. Diversion from Beaver Creek - Consumptive Use.

Subject to the provisions of Article III.B.2, the United States has the right to divert up to 24,714 Acre-Feet per Year from Beaver Creek.

##### 3. Ground Water - Consumptive Use.

Subject to the provisions of Article III.B.2:

(a) the United States has the right to develop 223 Acre-Feet of Ground Water extracted from well(s) located within the exterior boundaries of the Refuge; and

(b) subject also to the provisions of Article III.H, the United States has the right to develop 5,300 Acre-Feet of Deep Ground Water extracted from well(s) located any place within the Refuge.

#### B. Relative Priority.

##### 1. Priority Date.

Subject to the provisions of Article III.H., the United States has a priority date of November 12, 1940, for the water rights described in this Compact for the Refuge.

##### 2. Subordination.

The water rights described in Article III.A are subordinated to:

(a) all rights Arising Under State Law with a priority date before the Effective Date of this Compact;

(b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and

(c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

C. Period of Use.

The period of use of the water right set forth in Article III.A is January 1 through December 31 of each year.

D. Points and Means of Diversion.

1. Diversion of the water right set forth in Article III.A.2 may be located on Beaver Creek off the Refuge, subject to applicable State and federal law and/or any place within the Refuge.

2. Diversion of the water right set forth in Article III.A.1 and 3 may be located any place within the Refuge.

E. Place of Use.

The water rights set forth in Article III.A may be used anywhere within the Refuge.

F. Purposes.

The water rights set forth in Article III.A may be used for the purposes of the Refuge, including wildlife habitat maintenance and enhancement (including grazing needs for habitat management purposes), stock watering, and administrative uses, including but not limited to domestic, lawn and garden, institutional, and dust abatement uses.

G. Temporary Emergency Appropriations.

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the Refuge. The United States may divert water for emergency fire suppression at the Refuge without definition of the specific elements of a recordable water right. Temporary emergency use of water for emergency fire suppression from a source for which a water right is quantified in Article III shall not be considered an exercise of that right.

H. Deep Ground Water Use.

The development and use of the water right set forth in Article III.A.3(b) is subject to:

1. The provisions of Article III.I.1.b. and Article IV.B of the Fort Belknap-Montana Compact, 85-20-1001 through 85-20-1008, MCA; and

2. All applicable State laws pertaining to Ground Water wells, including but not limited to authorization under 85-2-311, MCA, and all state and federal water quality standards, with the exception that the priority date for this use shall be the Effective Date of this Compact and the water developed pursuant to this right may be used only for the purposes set forth in Article III.F of this Compact.

### I. Exercise of Right Subject to Agreement.

In addition to the foregoing, the exercise of the water rights quantified in this Compact are subject to the provisions set forth in that Memorandum of Understanding (MOU) executed between the FWS and the State and attached hereto as Appendix 3. The MOU may at any time be modified by the mutual consent of the Parties, and such modification shall not be considered a modification of this Compact. Prior to execution of the MOU or of any changes to it, the Parties shall: (1) provide notice to water users in the affected basins of the proposed terms of the MOU and any proposed changes to it; (2) hold at least one meeting in Malta, Montana, and one meeting in Glasgow, Montana, preceded by such notice as may be required under State law for public meetings, at which representatives of the State and the United States will explain the proposed MOU or any change(s) to it and allow for public comment; and (3) provide a reasonable period for receipt of any written public comment concerning the MOU or the proposed change(s).

## ARTICLE IV - IMPLEMENTATION OF COMPACT

### A. Enforcement of Water Right.

1. The United States, the State, or a holder of a water right Arising Under State Law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water right described by this Compact and a holder of a water right Arising Under State Law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department may enter the Refuge at a reasonable hour of the day for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail, telephone, e-mail, or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact and shall measure all exercises of its consumptive use water right. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.

### B. Use of Water Right.

The rights of the United States described in this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right.

The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under State law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

C. Change in Use.

1. Natural flow.

Water rights specified in this Compact for natural flow shall not be subject to Change in Use, provided that: the emergency use of water for fire suppression as provided for in Article III.G. shall not be deemed a Change in Use or violation of a water right for natural flow.

2. Consumptive uses.

The United States may make a Change in Use of its Consumptive Use water rights described in Article III.A. of this Compact provided that:

- (a) the Change in Use shall be in fulfillment of the purposes of the Refuge;
- (b) the total Consumptive Use shall not exceed the amount described in this Compact;
- (c) the Change in Use shall not adversely affect any water right Arising Under State Law; and
- (d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation right at the time of the change.

3. Reporting by the United States.

For any action affecting the use of a consumptive right, whether or not such action is deemed a Change in Use, the United States agrees to provide the following information to the Department upon request:

(a) Well Log:

A well log for any use that includes the drilling of a well or enlargement of an existing wellbore, such well log(s) also to be supplied to the Montana Bureau of Mines and Geology.

(b) Emergency Use:

(i) The use to which water was put, the dates of use, and the estimated amount of water used, for any temporary emergency use for fire suppression authorized by Article III.G of this Compact;

(ii) Such information needs to be provided to the Department, in response to its request, only after the commencement and subsequent cessation of any such emergency use.

(c) Periodic Report:

Within 60 days after receiving a request from the Department, the United States agrees to provide the Department with a report on:

(i) actions since the Effective Date of the Compact or any prior periodic report, whichever is later, affecting the use of a Consumptive Use right described in this Compact;

(ii) the initiation of new uses of any water right recognized in this Compact that were completed since the Effective Date of the Compact or any prior periodic report, whichever is later; and

(iii) any data and documents generated or received by the FWS since the Effective Date of the Compact or any prior periodic report, whichever is later, on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.

#### 4. Reporting by the State.

Upon request and no more often than once in each calendar year, the Department shall provide the United States with a report of:

(a) changes in appropriation granted, as defined by State law, since the Effective Date of the Compact or any prior report, whichever is later, of water rights upstream of the Refuge on Beaver Creek;

(b) any data and documents generated by the Department since the Effective Date of the Compact or any prior report, whichever is later, on the measurement of stream flows, diversions, and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;

(c) any certificate of water right issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate Ground Water in Basin 40M; and

(d) any permit issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate stock water for impoundment or pit in Basin 40M.

### ARTICLE V - GENERAL PROVISIONS

#### A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the Refuge.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the water rights of any Indian tribe or tribal member.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.

#### B. State Water Rights.

Nothing in this Compact may limit the exclusive authority of the State, including the authority of a water commissioner authorized by State law, to administer all current and future water rights arising under State Law within and upstream of the Refuge, provided that in administration of those water

rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract.

Concurrent with this Compact, the Parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge that are described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

D. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or the United States and any other state;

2. as a waiver by the United States of its right under State law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, MCA, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, MCA, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

5. to authorize the taking of a water right that is vested under state or federal law;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;

9. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the United States for the Refuge and does not affect

the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

11. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;

12. to prevent the United States from seeking a permit to appropriate water under State law;

13. to modify or prevent modification of the March 9, 1937, Memorandum of Agreement between the Secretary of the Interior and the Secretary of Agriculture in the Matter of a Water Supply for the Lake Bowdoin Migratory Water Fowl Refuge;

14. to prevent the United States from entering into an agreement pursuant to applicable law(s) to obtain additional water from the Milk River or Beaver Creek Basins by contract, lease, or purchase or from participating in efforts to improve water supply in the Milk River Basin.

E. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

F. Severability.

The provisions of this Compact are not severable.

G. Multiple Originals.

This compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and

2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

#### ARTICLE VI - FINALITY

A. Binding Effect.

1. After the Effective Date of this Compact, all of the provisions of this Compact shall be binding on:

(a) the State, and any Person, using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and

(b) except as otherwise provided in Article V.A., the United States, and any Person, using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this Compact shall not be modified without the mutual consent of the Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either Party shall render this Compact voidable at the election of the other Party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described

herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702, MCA, this Compact shall be voidable by action of and without prejudice to either Party.

5. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature:

(a) this Compact is not given written approval by the United States Department of the Interior;

(b) this Compact is not given written approval by the United States Department of Justice; or

(c) the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.

6. Notwithstanding any other provision in this Compact, the United States reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature, the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.

7. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, at any point subsequent to the Effective Date of this Compact, the United States unilaterally withdraws from the Memorandum of Understanding attached hereto as Appendix 3.

#### B. Disposition of Actions.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with State law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702, MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

##### 1. Dismissal of Filed Claims.

At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

##### 2. Disposition of Federal Suits.

Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the Parties shall execute and file



joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss with prejudice any claims made by the United States for the FWS for the Refuge described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding on the State that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

### 3. Continuation of Negotiations.

The Parties were unable to finalize agreement on quantification of the water rights for the National Bison Range and the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

### C. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the FWS in Montana on the Effective Date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever on the Effective Date of this Compact all said claims to water within the State for the Refuge. The State agrees to recognize the reserved water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State.

### D. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

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

Approved April 6, 2007

## CHAPTER NO. 162

[HB 724]

AN ACT PROVIDING REQUIREMENTS FOR SERVICE CONTRACTS AS PART OF CERTAIN BUSINESS ARRANGEMENTS; REQUIRING INSURANCE OF SERVICE CONTRACTS; 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 [sections 1 through 4], the following definitions apply:

(1) “Administrator” means the person who is responsible for the administration of service contracts.

(2) “Department” means the department of justice provided for in 2-15-2001.

(3) “Person” means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint-stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(4) “Provider” means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(5) “Reimbursement insurance policy” means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider’s nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(6) “Service contract” has the meaning provided in 33-1-102(10)(b).

(7) “Service contract holder” or “contract holder” means the person who is the purchaser or holder of a service contract.

**Section 2. Requirements for conducting business.** (1) A provider may appoint an administrator or other designee to be responsible for any or all of the administration of service contracts in compliance with [sections 1 through 4].

(2) Service contracts may not be issued, sold, or offered for sale in the state unless the provider complies with the requirements of one of the following three provisions:

(a) insures all service contracts under a reimbursement insurance policy issued by an insurer that is licensed, registered, or otherwise authorized to do business in the state and either:

(i) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of at least \$15 million and annually files copies of the insurer’s financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer’s state of domicile; or

(ii) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of less than \$15 million but at least equal to or greater than \$10 million and:

(A) upon request of the department, demonstrates that the company maintains a ratio of net written premiums, whenever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; and

(B) annually files copies of the insurer’s audited financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer’s state of domicile;

(b) (i) maintains a funded reserve account, which may be subject to examination and review by the department, for its obligations under its contracts issued and outstanding in this state, the reserves of which may not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force;

(ii) maintains a financial security deposit having a value of not less than 5% of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than \$25,000 and consisting of one of the following:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by authorized insurers in this state;

(C) cash; or

(D) a letter of credit issued by a qualified financial institution; or

(c) maintains, either alone or with its parent company, a net worth of stockholders' equity of \$100 million and provides the department, upon request, with:

(i) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the securities and exchange commission within the last calendar year; or

(ii) if the company does not file with the securities and exchange commission, a copy of the company's audited financial statements showing a net worth of the provider or its parent company of at least \$100 million.

(3) If information requested in subsection (2)(c)(i) or (2)(c)(ii) comes from the provider's parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(4) Except for the requirements provided in subsection (2), no other financial security requirements may be required.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by the providers and related service contract sellers, administrators, and other persons are exempt from all provisions in Title 33, as provided in 33-1-102(10)(a).

**Section 3. Required disclosures — reimbursement insurance policy.** (1) Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state must state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(2) If covered service is not provided by the provider within 60 days of proof of loss by the service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

**Section 4. Required disclosure — service contracts.** (1) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear understandable language that is easy to read and must disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy pursuant to [section 2(2)(a)] must contain the following items:

(a) a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

(b) the name and address of the insurer.

(3) Service contracts not insured under a reimbursement insurance policy pursuant to [section 2(2)(a)] must contain a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

(4) Service contracts must state the name and address of the provider and must identify any administrator if different from the provider, the service contract seller, and the service contract holder if provided by the holder. The identities of all parties referred to in this subsection are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale.

(5) A service contract or the service contract holder's receipt must state the total purchase price and the terms under which the contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of the sale with the service contract holder.

(6) Service contracts must state the existence of any deductible amount, as applicable.

(7) Service contracts must specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(8) Service contracts covering automobiles must state whether the use of nonoriginal manufacturer's parts are allowed.

(9) Service contracts must state any restrictions governing the transferability of the service contract, as applicable.

(10) Service contracts must state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or service contract holder.

(11) (a) Except as provided in subsection (11)(b), the provider shall mail a written notice to the service contract holder at the last-known address of the contract holder contained in the records of the provider at least 5 days prior to the cancellation by the provider.

(b) Prior notice is not required if the reason for cancellation is:

(i) nonpayment of the provider fee;

(ii) a material misrepresentation by the service contract holder to the provider; or

(iii) substantial breach of duties by the service contract holder relating to the covered product or its use.

(c) Any cancellation notice must state the effective date and reason for the cancellation.

(12) Service contracts must set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner's manual.

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 4].

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

**Section 7. Applicability.** [This act] applies to service contracts issued on or after January 1, 2008.

Approved April 6, 2007

## CHAPTER NO. 163

[HB 795]

AN ACT ALLOWING SPECIAL IMPROVEMENT DISTRICTS AND RURAL IMPROVEMENT DISTRICTS TO BE CREATED FOR ACQUISITION, CONSTRUCTION, OR RECONSTRUCTION OF LAND AND STRUCTURES FOR FIRE PROTECTION; AND AMENDING SECTION 7-12-4102, MCA.

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

**Section 1.** Section 7-12-4102, MCA, is amended to read:

**“7-12-4102. Authorization for creation of special improvement districts.** (1) The city or town council may:

- (a) create special improvement districts, designating them by number;
- (b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;
- (c) make the assessments payable in installments; and
- (d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

- (i) graded or regraded to the official grade;
- (ii) planked or replanked;
- (iii) paved or repaved;
- (iv) macadamized or remacadamized;
- (v) graveled or regraveled;
- (vi) piled or repiled;
- (vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) *land, structures, and appliances* for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions.”

Approved April 6, 2007

## CHAPTER NO. 164

[HB 37]

AN ACT DEFINING THE TERM “NOXIOUS WEEDS”; PROVIDING A NOTIFICATION PROCESS FOR NONCOMPLIANT WEED CONTROL ON STATE LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONTROL WEEDS ON STATE LANDS AND BILL FOR COSTS INCURRED; PROVIDING AN ADMINISTRATIVE HEARING PROCESS; GRANTING RULEMAKING AUTHORITY; AND AMENDING SECTION 77-1-101, MCA.

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

**Section 1.** Section 77-1-101, MCA, is amended to read:

**“77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) “Board” means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) “Commercial or concentrated recreational use” means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) (a) “General recreational use” includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(5) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(6) "*Noxious weeds*" or "*weeds*" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

~~(6)~~(7) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

(8) "*Weed management*" or "*control*" has the meaning provided in 7-22-2101."

**Section 2. Notice of noncompliance.** (1) When the department finds that noxious weeds on leased state land or on state land subject to a license or permit have not been controlled as required by 7-22-2116, the lease, the license, or the permit, the department shall contact the lessee, licensee, or permittee and require that a weed management and control program be implemented. The lessee, licensee, or permittee may request that an inspection of the state land be made with department staff. The department shall seek voluntary compliance with a noxious weed management and control program for the state lands prior to issuing a notice of noncompliance. If the lessee, licensee, or permittee fails to implement a weed management and control program when directed by the department, the department shall notify the lessee, licensee, or permittee by mail of the noncompliance. The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance by legal description or other reasonably identifiable description;



(c) measures to be undertaken in order to comply with the weed control responsibilities of the lease, license, or permit;

(d) a reasonable period of time, not less than 15 days, in which compliance measures must be initiated;

(e) the right of the person to request, within 15 days, an administrative hearing as provided by [section 4]; and

(f) the right of the person to request an extension if the measures in subsection (1)(c) cannot be implemented due to climatic or growing conditions.

(2) At least 2 weeks prior to sending a notice of noncompliance, the department shall send by certified mail to the lessee, licensee, or permittee a final notice that the weed management and control program has not been implemented.

**Section 3. Department authorized to control weeds — billing for weed control.** (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the resource development account established in 77-1-604, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter.

**Section 4. Administrative hearings.** (1) A person adversely affected by any notice, action, or order of the department may, within the timeframe stated in the notice of noncompliance provided for in [section 2], request an administrative hearing before the director or the director's designee. The director or the director's designee shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The director or the director's designee shall make a record of the proceeding and enter an order and findings within 30 days after the hearing.

(2) Within 30 days after the director or the director's designee renders an order and findings, the person adversely affected may file a petition in district court requesting that the order and findings be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part.

**Section 5. Rulemaking authority.** The department may adopt rules to implement [sections 2 through 4].

**Section 6. Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [sections 2 through 5].

**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 10, 2007

## CHAPTER NO. 165

[HB 57]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURCHASE LIABILITY INSURANCE FOR FOSTER PARENTS PROVIDING FOSTER CARE OR THERAPEUTIC FOSTER CARE FOR A YOUTH UNDER 18 YEARS OF AGE PLACED BY A STATE AGENCY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Liability insurance for foster parents.** (1) The department shall provide for liability and property damage insurance for a foster parent providing foster care services to children placed by the department and for a foster parent providing therapeutic foster care services under the auspices of a licensed child-placing agency.

(2) The state shall pay the cost of the premium for each policy issued under subsection (1). The foster parent may be required, as provided by rule, to pay a reasonable deductible for personal injury or property damage.

(3) The department shall adopt rules for the provision of insurance coverage to foster parents as provided in this section, including rules on premium payment and any deductibles required.

**Section 2. Appropriation.** There is appropriated to the department of public health and human services \$70,000 from the general fund for each fiscal year 2008 and 2009 for the purposes of purchasing liability coverage for foster parents as provided in [section 1].

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective July 1, 2007.

Approved April 10, 2007

## CHAPTER NO. 166

[HB 91]

AN ACT REVISING LAWS CONCERNING CHILD ABUSE AND NEGLECT TO COMPLY WITH FEDERAL LAW ALLOWING AUDIO AND VIDEO TESTIMONY; CLARIFYING REQUIREMENTS CONCERNING NOTICE BY CERTAIN PROFESSIONALS OF DRUG-AFFECTED INFANTS; AMENDING SECTIONS 41-3-115, 41-3-201, 41-3-205, 41-3-422, 41-3-423, 41-3-432, AND 41-3-445, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Audio or video testimony allowed.** A court may permit testimony by telephone, videoconference, or other audio or audiovisual means at any time in a proceeding pursuant to this chapter.

**Section 2.** Section 41-3-115, MCA, is amended to read:

**“41-3-115. Foster care review committee — foster care reviews — permanency hearings.** (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than three or more than seven members. To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

(b) The members must include:

(i) one representative of the department who may not be responsible for the placement of the child or have any other direct conflict of interest;

(ii) a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and

(iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review.

(c) Members may also include but are not limited to:

(i) a representative of the youth court;

(ii) a representative of a local school district;

(iii) a public health nurse;

(iv) an at-large community member with knowledge of child protective services.

(3) (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(b) The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate

services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

- (i) the safety, history, and specific needs of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether appropriate services have been available to the child and family on a timely basis; and
- (iv) the results of intervention.

*(c) If the department has placed a child in foster care in another state, the committee shall consider whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be returned to the parent, the committee shall consider both in-state and out-of-state placement options.*

~~(e)(d)~~ The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

- (i) the parents of the child or their attorneys;
  - (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;
  - (iii) the child who is the subject of the review if the child is 12 years of age or older;
  - (iv) the child's attorney, if any;
  - (v) the guardian ad litem;
  - (vi) the court-appointed attorney or special advocate of the child; and
  - (vii) the child's Indian tribe if the child is an Indian.
- (b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.

(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

- (a) the continuing need for the placement and the appropriateness and safety of the placement;
- (b) compliance with the case plan;
- (c) the progress that has been made toward alleviating the need for placement;

(d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(9) The committee is subject to the call of the district court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the district court."

**Section 3.** 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) ~~Christian Science practitioners and~~ 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)*;

(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.*

~~(3)~~(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.

~~(4)~~~~(5)~~ (a) Except as provided in subsection ~~(4)~~~~(b)~~ ~~(5)~~~~(b)~~ or ~~(4)~~~~(e)~~ ~~(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.

~~(5)~~~~(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 4.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(6)~~ (7) and ~~(7)~~ (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) (7) if the news organization, employee,



writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8)(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

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

**Section 5.** Section 41-3-422, MCA, is amended to read:

**"41-3-422. Abuse and neglect petitions — burden of proof.** (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and ~~must be given an opportunity~~ *has the right* to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted

intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing

master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws.”

**Section 6.** Section 41-3-423, MCA, is amended to read:

**“41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child’s home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child’s health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child’s sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent’s ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, *including consideration of both in-state and out-of-state permanent placement options for the child*, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, *including, if appropriate, placement in another state*, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, *including identifying in-state and out-of-state placements*, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

**Section 7.** Section 41-3-432, MCA, is amended to read:

**"41-3-432. Show cause hearing — order.** (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425. ~~The court may permit testimony by telephone, audiovisual means, or other electronic means.~~

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of

the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court.”

**Section 8.** Section 41-3-445, MCA, is amended to read:

**“41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child’s first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child’s parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department’s efforts to effectuate the permanency plan for the child, address the options for the child’s permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) *In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.*

(4)(5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(5)(6) The court shall approve a specific permanency plan for the child and make written findings on:

(a) whether the permanency plan is in the best interests of the child;

(b) whether the department has made reasonable efforts to finalize the plan; and

(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

(6)(7) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (7)(8) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(7)(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;



(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(8)(9) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

**Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

**Section 10. Effective date.** [This act] is effective July 1, 2007.

Approved April 10, 2007

## CHAPTER NO. 167

[HB 112]

AN ACT PRESCRIBING THE AUTHORITY AND DUTIES OF CERTAIN GOVERNMENTAL FIRE AGENCY FIRE CHIEFS; AND REPEALING SECTION 7-33-2313, MCA.

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

**Section 1. Fire chief — powers and duties.** (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

- (a) development and implementation of agency programs and procedures;
- (b) performance of agency personnel;
- (c) preventing outbreak of fires;

(d) minimizing danger to persons and damage to property caused by fires; and

(e) ensuring the provision and management of any emergency services that are established by the agency and that are consistent with national and other appropriate standards. These services may include but are not limited to:

- (i) fire suppression;
- (ii) medical aid;
- (iii) hazardous materials response;
- (iv) ambulance service; and
- (v) extrication from vehicles.

(2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.

(3) The fire chief serves under the direction of the governing body that has created the governmental fire agency.

(4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.

(5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.

(6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

(7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

- (a) enter any property;
- (b) prohibit any person, vehicle, or thing from approaching the scene;
- (c) remove or cause to be removed from the scene of the fire or other emergency any person, vehicle, or thing that the chief determines may interfere with the operations of the agency.

(8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.

(b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.

(c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

(9) (a) The fire chief may establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:

- (i) regular examination of fire hazards; and
- (ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code

jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.

(b) The fire chief may establish a formal fire inspection program as authorized by the department of justice under 50-61-102.

(10) The fire chief shall report all fires to the department of justice and shall use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.

(11) The fire chief is responsible for establishing and maintaining a training program for the agency and may use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.

(12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments.

**Section 2. Repealer.** Section 7-33-2313, MCA, is repealed.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, and the provisions of Title 7, chapter 33, apply to [section 1].

Approved April 10, 2007

## CHAPTER NO. 168

[HB 166]

AN ACT REVISING ALTERNATIVE FUELS TAX LAWS; MODIFYING THE TAX CREDITS FOR PROPERTY USED FOR THE PRODUCTION, BLENDING, AND STORAGE OF BIODIESEL OR BIOLUBRICANT; ALLOWING CREDITS TO BE CARRIED FORWARD FOR 7 YEARS; EXTENDING CREDITS TO COVER EXPENSES INCURRED IN CERTAIN TIME PERIODS; EXTENDING THE DURATION OF THE CREDITS; AMENDING SECTIONS 15-32-701, 15-32-702, AND 15-32-703, 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.** Section 15-32-701, MCA, is amended to read:

**"15-32-701. Oilseed crush facility — tax credit.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for *the costs of investments in depreciable property in Montana to crush that is used primarily for crushing oilseed crops for purposes of biodiesel production producing biodiesel or biolubricant.*

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for ~~the cost of each item of property purchased to crush oilseed only in the year in which the property was purchased~~ *costs described in subsection (1) incurred in the 2 tax years before the facility begins crushing oilseed or in any tax year in which the facility is crushing oilseed.*

(3) The *total* amount of the *credit credits for all years* that may be claimed for a facility under this section for investments in depreciable property is 15% of the cost of the property costs described in subsection (1), up to a total of \$500,000. for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.

(4) The following requirements must *also* be met for a taxpayer to be entitled to a tax credit for investment in property to crush oilseed under this section:

(a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture a product from oilseed and must be operating before January 1, 2010. The depreciable property for which the credit is claimed must begin to be used for the purposes described in subsection (1) before January 1, 2015.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and, *except for the 2 tax-year period claimed in subsection (2)*, must have been processing oilseed or manufacturing a product from oilseed using the depreciable property for the purposes described in subsection (1) during the tax year for which the credit is claimed and during each year for which the credit is carried forward.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not *completely* used by the taxpayer in the tax year in which the credit is initially claimed may not be carried forward to offset for credit against a taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not crushing oilseed or beyond the seventh tax year after the tax year for which the credit was initially claimed. If a facility in which property is installed and for which a credit is claimed ceases operations production of biodiesel or biolubricant for a period of 12 continuous months within 5 years of after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward, the credit is subject to recapture. The person claiming the credit is liable for the *total* amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) *For the purposes of this section, "biolubricant" means a commercial or industrial product, other than food or feed, that is composed in whole or in substantial part of biological products, renewable domestic agricultural materials, including plant, animal, or marine materials, or forestry materials and that is used in place of a petroleum-based lubricant.*

**Section 2.** Section 15-32-702, MCA, is amended to read:

**"15-32-702. Biodiesel or biolubricant production facility tax credit.**

(1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the ~~cost~~ *costs of investments in depreciable property for constructing and or equipping a facility, or both, in Montana to be used for biodiesel or biolubricant production.*

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production costs described in subsection (1) incurred in the 2 tax years before the facility begins producing biodiesel or biolubricant or in any tax year in which the facility is producing biodiesel or biolubricant.~~

(3) The ~~total amount of the credit credits for all years that may be claimed for a facility under this section for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. The credit must be claimed in the tax year in which the facility begins production is 15% of the costs described in subsection (1).~~

(4) The following requirements must *also* be met *for a taxpayer* to be entitled to a tax credit ~~under this section for investment in property to manufacture biodiesel:~~

(a) ~~The investment must be for depreciable property used primarily to manufacture biodiesel and must be~~ *The depreciable property for which the credit is claimed must begin operating before January 1, 2010 2015.*

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that manufactures biodiesel or biolubricant.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and, *except for the 2 tax-year period claimed in subsection (2), must have been manufacturing producing biodiesel or biolubricant during the tax year for which the credit is claimed and during each year in which the credit is carried forward.*

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not *completely* used by the taxpayer in the tax year *in which the credit was initially taken* may ~~not~~ be carried forward ~~to offset for credit against a taxpayer's tax liability for any~~

succeeding tax year *until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not producing biodiesel or biolubricant or beyond the seventh tax year after the tax year for which the credit was initially claimed.* If a facility for which a credit is claimed ceases ~~operations~~ *production of biodiesel or biolubricant for a period of 12 continuous months* within 5 years ~~of~~ *after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward*, the credit is subject to recapture. The person claiming the credit is liable for the *total* amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel *or biolubricant* production facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, *the following definitions apply:*

(a) "biodiesel" "*Biodiesel*" has the meaning provided in 15-70-301.

(b) "*Biolubricant*" has the meaning provided in 15-32-701(9)."

**Section 3.** Section 15-32-703, MCA, is amended to read:

**"15-32-703. Biodiesel blending and storage tax credit — recapture — report to interim committee.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the ~~cost of storage and blending equipment to be used for~~ *costs of investments in depreciable property used for storing or blending biodiesel with petroleum diesel for sale.*

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of installing storage and blending equipment only in the year in which costs described in subsection (1) incurred in the 2 tax years before the taxpayer begins blending biodiesel fuel for sale or in any tax year in which the taxpayer is blending biodiesel fuel for sale.~~

(3) (a) The ~~total amount of the credit credits for all years that may be claimed by a distributor under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment costs described in subsection (1), up to a total of \$52,500. The amount of the credit may not exceed \$52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.~~

(b) The ~~total amount of the credit credits for all years that may be claimed by an owner or operator of a motor fuel outlet under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment costs described in subsection (1), up to a total of \$7,500. The amount of the credit may not exceed \$7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.~~

(4) The following requirements must *also* be met ~~in order for a taxpayer to be entitled to a tax credit for investment in property to blend biodiesel under this section:~~

(a) The investment must be for depreciable property used primarily to blend *petroleum diesel with biodiesel made entirely from Montana-produced ingredients with petroleum diesel feedstocks.*

(b) Sales of biodiesel must be at least 2% of the taxpayer's total diesel sales by the end of the third year following the *initial* tax year in which the credit is *initially* claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and, *except for the 2 tax-year period claimed in subsection (2),* must have been blending biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not *completely* used by the taxpayer in the tax year *in which the credit is initially claimed* may ~~not be carried forward to offset a taxpayer's tax liability for any succeeding tax year for credit against the taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability.~~ *However, a credit may not be carried forward to any tax year in which the facility is not blending biodiesel or storing biodiesel for blending or beyond the seventh tax year after the tax year for which the credit was initially claimed.* If a facility for which a credit is claimed ceases ~~operations~~ *blending of biodiesel with petroleum diesel for sale for a period of 12 continuous months* within 5 years ~~of the~~ *after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward* or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the *total* credit is subject to recapture. The person claiming the credit is liable for the *total* amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

(10) ~~Beginning after January 1, 2006, the~~ *The* department shall report to the revenue and transportation interim committee at least once each year regarding the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit."

**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 investments in depreciable property made after December 31, 2004.

Approved April 10, 2007

## CHAPTER NO. 169

[HB 198]

AN ACT EXPANDING THE DENTAL CARE BENEFITS OF THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1005, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 53-4-1005, MCA, is amended to read:

**“53-4-1005. (Temporary) Benefits provided.** (1) Benefits provided to participants in the program may include but are not limited to:

- (a) inpatient and outpatient hospital services;
- (b) physician and advanced practice registered nurse services;
- (c) laboratory and x-ray services;
- (d) well-child and well-baby services;
- (e) immunizations;
- (f) clinic services;
- (g) dental services;
- (h) prescription drugs;
- (i) mental health and substance abuse treatment services;
- (j) hearing and vision exams; and
- (k) eyeglasses.

(2) *The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed \$100,000 in state funds, plus any matched federal funds, each fiscal year.*

(2)(3) The department is specifically prohibited from providing payment for birth control contraceptives under this program. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

**Section 3. Termination.** (1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund.

Approved April 10, 2007



## CHAPTER NO. 170

[HB 206]

AN ACT CLARIFYING THAT A MILL LEVY ELECTION PROPOSAL MUST SPECIFY EITHER THE DOLLAR AMOUNT TO BE RAISED OR THE NUMBER OF MILLS TO BE LEVIED AND WHETHER THE MILL LEVY IS PERMANENT; CLARIFYING THAT THE GOVERNING BODY MAY REDUCE THE LEVY WITHOUT LOSING THE AUTHORITY TO IMPOSE UP TO THE MAXIMUM APPROVED; AND AMENDING SECTION 15-10-425, MCA.

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

**Section 1.** Section 15-10-425, MCA, is amended to read:

**“15-10-425. Mill levy election.** (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

(a) the specific purpose for which the additional money will be used;

(b) *either:*

*(i) the specific amount of money to be raised and the approximate number of mills to be imposed; or*

*(e)(ii) the approximate specific number of mills required to be imposed and the approximate amount of money to be raised; and*

*(d)(c) whether the levy is permanent or the durational limit, if any, on the levy.*

(3) Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in *either* the amount *or the number of mills* specified in the resolution or charter amendment.

*(5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes a governing body to impose more*

*than the approved levy in any fiscal year or to extend the duration of the approved levy.”*

Approved April 10, 2007

## CHAPTER NO. 171

[HB 253]

AN ACT REMOVING THE REQUIREMENT THAT A BOARD OF COUNTY COMMISSIONERS HOLD AN ELECTION IF THE COST OF CONSTRUCTION OF A BRIDGE IN A MUNICIPALITY EXCEEDS \$10,000; AND REPEALING SECTION 7-14-2205, MCA.

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

**Section 1. Repealer.** Section 7-14-2205, MCA, is repealed.

Approved April 10, 2007

## CHAPTER NO. 172

[HB 265]

AN ACT CLARIFYING THAT AN ACTION OF A PLANNING BOARD IS NOT OFFICIAL UNLESS AUTHORIZED BY A MAJORITY OF THE QUORUM PRESENT AT THE MEETING; AMENDING SECTION 76-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-1-304, MCA, is amended to read:

**“76-1-304. Quorum — official action.** (1) A majority of members ~~shall constitute~~ *constitutes* a quorum.

(2) ~~No~~ *An* action of the planning board is *not* official, ~~however,~~ *unless a quorum is present and unless the action is authorized by a majority of members of the board the quorum* at a regular or properly called special meeting.”

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

Approved April 10, 2007

## CHAPTER NO. 173

[HB 363]

AN ACT REVISING SCHOOL DISTRICT GENERAL FUND BUDGET LIMITATIONS; ALLOWING A SCHOOL DISTRICT TO ADOPT A GENERAL FUND BUDGET IN AN AMOUNT UP TO THE MAXIMUM GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET; ALLOWING THE ADDITION OF INCREASES IN STATE FUNDING TO A SCHOOL DISTRICT'S GENERAL FUND BUDGET FOR THE PRIOR YEAR; REVISING ELECTION PROVISIONS FOR FINANCING OF THE GENERAL FUND LEVY REQUIREMENT; AMENDING SECTIONS 20-9-141, 20-9-308, AND 20-9-353, 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 20-9-141, MCA, is amended to read:

**“20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district’s general fund on the basis of the following procedure:

(a) Determine the funding required for the district’s final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district’s nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, ~~including any additional funding for a general fund budget that exceeds the maximum general fund budget.~~

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for

the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

**Section 2.** Section 20-9-308, MCA, is amended to read:

**"20-9-308. (Temporary) 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 and, except as provided in subsection (3), does not exceed the maximum general fund 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 but does not exceed the maximum general fund budget for the district and to increase the over-BASE budget levy 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) (a) (i) Except as provided in subsections (3)(a)(ii) and (3)(b), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. Except as provided in subsection (3)(b), a school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period.~~

~~(ii) Except as provided in subsection (3)(b), the trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:~~

~~(A) the adopted budget for the previous year; or~~

~~(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.~~

~~(b) A school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget adopted between fiscal year 2001 and fiscal year 2005.~~

~~(e) Except as provided in 20-9-353(8), the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.~~

(4)(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.

~~(5)(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. (Terminates June 30, 2007—sec. 3, Ch. 190, L. 2005; sec. 25(2), Ch. 462, L. 2005.)~~

**20-9-308. (Effective July 1, 2007) 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 and, ~~except as provided in subsection (3), does not exceed the maximum general fund 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 ~~but does not exceed the maximum general fund budget for the district~~ *and to increase the over-BASE budget levy 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) (a) (i) ~~Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no~~

later than the end of the 5-year period. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4)(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.

~~(5)(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 3.** Section 20-9-353, MCA, is amended to read:

**“20-9-353. (Temporary) Additional financing for general fund — election for authorization to impose.** (1) The trustees of a district may propose to adopt:

(a) an over-BASE budget amount for the district general fund that does not exceed the ~~maximum~~ general fund budget for the district or other limitations, as provided in 20-9-308(2); or

~~(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3).~~

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1)~~(a)~~, any increase in local property taxes authorized by ~~20-9-308(5)~~ 20-9-308(4) 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) Except as provided in subsection (8), when the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority 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. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:~~

#### PROPOSITION

~~Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?~~

~~FOR budget authority and any levy.~~

~~AGAINST budget authority and any levy.~~

~~(4)(3)~~ If the election *proposition* on any additional financing or budget authority 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.

~~(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.~~

~~(6)(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.

~~(7)(5)~~ If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount ~~or an amount in excess of the maximum general fund budget amount for the district~~, as allowed by 20-9-308(3), to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(6)~~ (4) of this section.

~~(8) The trustees of the district may permissively levy up to the same over-BASE property tax revenue levied in the prior fiscal year. (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)~~

**20-9-353. (Effective July 1, 2007) Additional financing for general fund — election for authorization to impose.** (1) The trustees of a district may propose to adopt:

(a) an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308(2); or

(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3).

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1)(a), any increase in local property taxes authorized by ~~20-9-308(5)~~ 20-9-308(4) 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) When the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority 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. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:~~

#### PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?



FOR budget authority and any levy.

AGAINST budget authority and any levy.

~~(4)(3)~~ If the election *proposition* on any additional financing ~~or budget authority~~ 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.

~~(5)~~ Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.

~~(6)(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.

~~(7)(5)~~ If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount ~~or an amount in excess of the maximum general fund budget amount for the district~~, as allowed by 20-9-308(3), to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(6)~~ (4) of this section.”

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

**Section 5. Retroactive applicability.** [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 1, 2007, in preparing school budgets for the 2008 school fiscal year, including but not limited to setting, scheduling, and holding general fund levy elections.

Approved April 10, 2007

## CHAPTER NO. 174

[HB 427]

AN ACT REVISING NATURAL GAS UNIVERSAL SYSTEM BENEFITS LAWS; CLARIFYING THE DEFINITION OF “UNIVERSAL SYSTEM BENEFITS PROGRAMS”; CLARIFYING THAT THE PUBLIC SERVICE COMMISSION HAS ONGOING OVERSIGHT FOR NATURAL GAS UTILITY UNIVERSAL SYSTEM BENEFIT PROGRAMS; PROVIDING THAT A UNIVERSAL SYSTEM BENEFITS CHARGE MAY BE ESTABLISHED AND REVISED THROUGH A TRACKING PROCEDURE; CLARIFYING THAT A NATURAL GAS UTILITY’S FUNDING REQUIREMENT IS A MINIMUM FUNDING REQUIREMENT; REQUIRING AN ANNUAL REPORT; AMENDING SECTIONS 69-3-1402 AND 69-3-1408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-3-1402, MCA, is amended to read:

**“69-3-1402. Definitions.** As used in this part, the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and

(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

(5) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.

(6) "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

(7) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

(8) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

(9) "Transition costs" means:

(a) a natural gas utility's net, verifiable ~~production-~~ *production-related* and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:

(i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs, including all costs, expenses, and fees related to the issuance of transition bonds;

(ii) the above-market costs associated with existing gas supply commitments;

(iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;

(iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and

(v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to 69-3-1403.

(b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(10) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

(11) "Transmission services provider" means a person controlling or operating transmission facilities.

(12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(13) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, *low-income energy bill discounts*, low-income weatherization, and *emergency low-income energy bill assistance*."

**Section 2.** Section 69-3-1408, MCA, is amended to read:

**"69-3-1408. Universal system benefits programs — establishing nonbypassable rate.** (1) A natural gas utility shall implement, upon commission approval *and subject to ongoing commission oversight and direction*, a universal system benefits program ~~that considers existing universal system benefits programs in the state.~~

(2) The commission shall establish a universal system benefits charge that ~~either~~ all natural gas transmission services providers or all distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. *The charge may be established and revised through a universal system benefits charge tracking procedure.* The method of assessing ~~those rates the charge~~ may not disproportionately burden a large transmission services provider's customers. Within the universal system benefits charge, *beginning January 1, 2007*, a natural gas utility's *minimum* annual funding requirement for low-income weatherization and low-income energy bill assistance is established at ~~0.42%~~ *0.42%* of a natural gas utility's annual revenue *for the previous year*. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.

(3) *A natural gas utility shall file an annual report of its universal system benefits charges, programs, and program funding levels with the commission in a manner prescribed by the commission.*

~~(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for universal system benefits programs. The determination should focus specifically on the existence of markets to provide for any of the universal system benefits programs or on whether other means for funding those universal system benefits programs have developed. These~~

recommendations may also address how future reevaluations will be provided, if necessary.”

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

Approved April 10, 2007

## CHAPTER NO. 175

[HB 437]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCLUDE A DISPUTE RESOLUTION CLAUSE IN ITS CONTRACTS WITH THIRD-PARTY PROVIDERS OF HUMAN SERVICES; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Dispute resolution requirement for contracts.** Each written contract that the department of public health and human services enters into for the provision of human services to a third party must contain a clause providing for a dispute resolution process in the event of disagreement between the contractor and the department about the terms of the contract.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2007.

Approved April 10, 2007

## CHAPTER NO. 176

[HB 532]

AN ACT REVISING LAWS GOVERNING STATE DUTY FOR THE MONTANA NATIONAL GUARD; CLARIFYING THAT NATIONAL GUARD RESOURCES MAY BE USED TO PREPARE FOR STATE ACTIVE DUTY ORDERED BY THE GOVERNOR; PROVIDING A DEFINITION; AMENDING STATE PAY OF NATIONAL GUARD MEMBERS; AMENDING SECTIONS 10-1-501 AND 10-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. State duty for special work — definition.** (1) To fulfill the department’s duties under 10-1-102, the adjutant general as the department head under 2-15-1201 may use national guard resources and place Montana national guard personnel on state duty for special work.

(2) For purposes of this section, “state duty for special work” means any activity, such as administrative functions, exercises, training, coordination, or planning, that is conducted for the purposes of preparing the Montana national guard for active duty ordered by the governor under Article VI, section 13, of the Montana constitution. State duty for special work does not include active duty ordered by the governor under Article VI, section 13.

**Section 2.** Section 10-1-501, MCA, is amended to read:

**“10-1-501. Pay for activated militia from general fund.** (1) When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses ~~shall~~ *must* be drawn upon the general fund of the state.

(2) *If national guard members are placed on state duty for special work pursuant to [section 1], the members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for state duty for special work must be drawn upon funds appropriated by the legislature.”*

**Section 3.** Section 10-1-502, MCA, is amended to read:

**“10-1-502. Pay and allowances.** (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state ~~shall~~ *must* receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state ~~shall~~ *must* receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member ~~shall~~ *must* receive the pay and allowances as prescribed for an enlisted member of corresponding grade *and length of service* when on active duty in federal service.

(3) *A national guard member placed on state duty for special work, as defined in [section 1], must receive the pay and allowances as prescribed for an officer or enlisted member of corresponding grade and length of service when on active duty in federal service.*

(3)(4) The pay and allowances provided for in ~~this section~~ *subsections (1) and (2)* may not be paid when pay and allowances for the active duty are provided out of federal funds.”

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 1, part 5, and the provisions of Title 10, chapter 1, part 5, apply to [section 1].

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

Approved April 10, 2007

## CHAPTER NO. 177

[HB 756]

AN ACT ELIMINATING THE REQUIREMENT THAT AN APPLICANT MUST CREATE 10 NEW JOBS IN ORDER TO BE ELIGIBLE FOR A GRANT UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; AMENDING SECTION 39-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-11-202, MCA, is amended to read:

**“39-11-202. (Temporary) Primary sector business workforce training grants — eligibility.** (1) Subject to appropriation by the legislature, the grant review committee provided for in 39-11-201 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 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.

(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 for which an employee is being trained. A grant may be provided only for a new job for which an average weekly wage is paid that meets or exceeds the lesser of the current state's average weekly wage or the current average weekly wage of the county in which the employees are to be principally employed.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher 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) A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy.~~ 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 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 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 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 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) (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. (Terminates June 30, 2007—sec. 13, Ch. 26, L. 2005.)

**39-11-202. (Temporary—effective July 1, 2007) Primary sector business workforce training grants — eligibility.** (1) Subject to appropriation by the legislature, the grant review committee provided for in 39-11-201 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 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.

(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 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.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher 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) ~~A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy.~~ 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 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 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 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 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) (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. (Terminates June 30, 2009—sec. 4, Ch. 169, L. 2005.)”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved April 10, 2007

## CHAPTER NO. 178

[HB 769]

AN ACT REQUIRING MANDATORY REGISTRATION AND LICENSURE OF ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; ALLOWING FOR PROVISIONAL LICENSING; PROVIDING FOR BACKGROUND INVESTIGATIONS OF CERTAIN EMPLOYEES AND MANAGERS AND ALLOWING FOR A WAIVER; DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES REGARDING PROGRAM CRITERIA; REQUIRING DEPARTMENT INSPECTION OF THE PROGRAMS FOR LICENSURE AND EVERY 3 YEARS; ALLOWING INSPECTIONS IN RESPONSE TO COMPLAINTS; PROVIDING PENALTIES AND NOTIFICATION PROCEDURES; REVISING DEFINITIONS; ESTABLISHING CRITERIA FOR ENSURING PUBLIC HEALTH AND SAFETY FOR PROGRAM PARTICIPANTS; REQUIRING PROOF OF INSURANCE; AMENDING SECTIONS 37-48-101, 37-48-102, AND 37-48-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Licensure.** (1) A program must be licensed by the board.

(2) The board may issue a license that is valid for a period of between 1 year and 3 years or may issue a provisional license as provided in [section 2].

(3) A license is valid only for the program for which it is issued and may not be sold, assigned, or transferred without the approval of the board.

(4) The board may suspend or revoke a license if the board, upon a hearing, as provided in 37-1-131, determines that the program is not operated in a manner consistent with the rules adopted and is not in substantial compliance with the program's plan of operation.

(5) The board may approve a modification of the program's plan of operation. A program may not deviate from its plan of operation without the prior approval of the board.

(6) A license terminates and the holder of the program license shall return the license to the department if:

- (a) program operations are discontinued;
- (b) ownership of the program is transferred without approval of the board;
- (c) the board suspends or revokes the license; or
- (d) the license expires without being renewed.

(7) The program license must be displayed in a conspicuous place near the admitting office of the program.

**Section 2. Provisional license.** (1) The board may grant a provisional license to a program:

(a) that was registered with the board as of December 31, 2006; and

(b) that has submitted to the board:

(i) a completed application;

(ii) background materials, as described in [section 3], necessary to conduct background investigations on the program's managers and workers affiliated with the program; and

(iii) the required fees.

(2) A provisional license allows a program to operate for a period of up to 1 year, pending an onsite inspection of the program's facilities and the completion of background investigations on all managers and workers affiliated with the program who have direct access to program participants.

(3) The board may terminate a provisional license by notifying the program of any of the following:

(a) the program's failure to pass the onsite inspection;

(b) the program's failure to provide timely background materials for investigation of all managers and workers affiliated with the program who have direct access to program participants; or

(c) the determination that one or more of the workers affiliated with the program with direct access to program participants are considered unsuitable, based on background information, for having direct access to program participants although the program upon notification may take corrective action within 30 days.

(4) If the program shows good cause, the board may extend a provisional license to complete background investigations on managers and workers affiliated with the program.

(5) The board may decline to grant a provisional license or a license to a program that the board determines is substantially the same in ownership, management, and plan of operation as a program that had previously been denied a provisional license or a license.

**Section 3. Background investigations — waiver.** (1) The program shall submit background checks for the program manager and each worker affiliated with the program who has or will have direct access to program participants in a manner prescribed by the board or shall provide to the board the information necessary for the board to conduct a background investigation, including a set of fingerprints as required for a fingerprint check by the department of justice and the federal bureau of investigation.

(2) For the purposes of the background investigation required by this section, each individual subject to subsection (1) must be evaluated pursuant to the provisions of Title 37, chapter 1, part 2.

(3) The board may, by rule, identify specific criminal offenses for which a conviction disqualifies a worker affiliated with the program and procedures for disqualification based upon substantiated child abuse or neglect of children.

(4) (a) The board may, by rule, waive the requirement for a background investigation for an individual who holds a professional or occupational license

granted by the state that is not suspended or restricted by action of the appropriate licensing entity.

(b) The board may grant a waiver of the background investigation upon a determination that the class or type of licensure referenced in subsection (4)(a):

(i) subjects the individual to at least as rigorous a background investigation as required by this section; and

(ii) contains provisions disqualifying applicants for a professional or occupational license that are similar to the provisions in subsection (3) and that are specified by the board by rule as disqualifying an individual whose job requires direct access to a program participant.

**Section 4. Rules — program criteria — application evaluations.** (1) The board shall adopt rules establishing specific minimum criteria to ensure the health and safety of program participants and other rules necessary to implement this part. Those criteria may incorporate by reference appropriate standards established by other governmental entities, including:

(a) building codes for those structures used as a residence for program participants;

(b) health and sanitation requirements; and

(c) other standards adopted by the board by rule.

(2) The board shall evaluate each application for a license to determine whether the proposed plan of operation:

(a) meets the specific minimum criteria set by rule;

(b) reasonably provides for the safety and well-being of program participants; and

(c) is consistent with the goals and objectives stated in the plan of operation.

(3) The board shall adopt rules by October 1, 2008, to begin licensing the programs, and the programs have 30 days from the effective date to apply for a license once the rules are effective.

**Section 5. Department or board inspection.** (1) The department or board may enter and inspect, without prior notice, program premises and facilities in response to a complaint. The inspection may be for purposes of determining compliance with the provisions of this part or for other purposes provided for by rule.

(2) The department or board may enlist the assistance of other governmental entities in inspections, including but not limited to a county health officer or a county sanitarian.

(3) (a) Except as provided in subsection (3)(b), the department or board shall conduct an onsite inspection of:

(i) each program applying for a license; and

(ii) each licensed program at least once every 3 years.

(b) Instead of an onsite inspection of a licensed program, the department or board may consider verified proof of successful certification by a national or regional certifying organization approved by the board by rule.

**Section 6. Penalty for failure to obtain license — notice of violation.** (1) It is unlawful to operate a program without a license or a provisional license. A person who maintains or operates a program in violation of this section is

guilty of a misdemeanor punishable under 46-18-212. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) If the department receives a complaint or information alleging a violation of this part, the department may serve written notice to the program management either in person or by certified mail. The notice must inform the program management of the right to a hearing and whether injunctive action is being sought. The notice may also recommend corrective action to achieve voluntary compliance and a schedule for completing the corrective action if the program prefers to take corrective action rather than proceed to a contested case hearing.

**Section 7.** Section 37-48-101, MCA, is amended to read:

**“37-48-101. Purpose.** The purpose of the board is to ~~examine the benefit of~~ *license and regulate* private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.”

**Section 8.** Section 37-48-102, MCA, is amended to read:

**“37-48-102. Definitions.** As used in this part, the following definitions apply:

(1) “Board” means the board of private alternative adolescent residential or outdoor programs provided for in 2-15-1745.

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

(3) *“Direct access” means that an individual has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.*

(4) *“Manager” means an individual who has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.*

(5) *“Plan of operation” means the operational structures and parameters describing the program as identified in 37-48-103 and as required by the board by rule.*

~~(3)~~(6) (a) “Program” means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) *“Program participant” means an adolescent enrolled in or participating in a program, other than an adolescent serving as an employee of the program.*

(8) *“Worker affiliated with the program” means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.”*

**Section 9.** Section 37-48-103, MCA, is amended to read:

**“37-48-103. Powers and duties of board — registration Registration and licensing requirements — fees.** (1) The board shall develop and implement a process for registration of adopt rules and set fees for mandatory registration and licensing programs and to set fees to carry out its duties under this section. Each program is required to provide policies of insurance in a form and in an adequate amount as determined by board rule.

~~(2) The board shall:~~

~~(a) examine data gathered from the registration process;~~

~~(b) examine current regulations and standards applicable to these programs;~~

~~(c) determine additional regulations and standards that are needed;~~

~~(d) examine the quality of child care available in the various programs, any aspects of existing programs that need improvement, and the positive contributions to or negative interactions with local communities;~~

~~(e) determine the need for the continued existence of the board and its duties or responsibilities; and~~

~~(f) report to the economic affairs interim committee detailing the board’s findings, recommendations, and proposed legislation, if any, by September 15, 2006.~~

~~(3)~~(2) The board shall require *the following* information to be provided for registration of programs licensing. The information includes but is not limited to:

(a) a description of the program and facility;

~~(b)~~ (c) *a description of the goals and objectives of the program for program participants;*

~~(c)~~(c) *a description of the population served by the program; including the maximum number of program participants to be served and the gender of program participants;*

~~(d)~~(d) *the location and contact information for each program, including the person responsible for the conduct of the program;*

~~(e)~~(e) *a list of professional and supervisory employees and relevant credentials and other qualifications;*

~~(f)~~(f) *the average daily census;*

~~(g)~~(g) *a copy of program policies and procedures on:*

(i) admission;

(ii) behavior management;

- (iii) communication with family members;
  - (iv) the availability of routine and emergency medical and psychological care; ~~and~~
  - (v) medication management;.
- (h) any information that the board may require to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation of a manager or a worker affiliated with the program who has direct access to program participants, including information pertaining to criminal convictions; and*
- (i) any other related information specified by the board by rule.*

~~(4)(3) The board shall adopt rules to determine any additional information necessary for registration. Registration must be updated annually. The board may set fees as provided in 37-1-134 that may be commensurate with program size. The board shall issue licenses upon receipt of the appropriate fees and a finding that the information provided in subsection (2) is satisfactory. The board shall make available to the public information on the name, address, and contact information for each registered licensed program.~~

~~(5) The board is exempt from the provisions in 37-1-105, 37-1-136, 37-1-137, 37-1-138, 37-1-141, and Title 37, chapter 1, parts 2 and 3."~~

**Section 10. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 48, part 1, and the provisions of Title 37, chapter 48, part 1, apply to [sections 1 through 6].

**Section 11. Effective date.** [This act] is effective on passage and approval.

Approved April 10, 2007

## CHAPTER NO. 179

[HB 786]

AN ACT EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A BROKER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;



(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) *employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker, as provided in 49 U.S.C. 13102;*

~~(w)~~(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(w)(x) employment of a person who is working under an independent contractor exemption certificate.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or

directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation.”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved April 10, 2007

## CHAPTER NO. 180

[HB 789]

AN ACT TREATING A TRIBAL IDENTIFICATION CARD IN A MANNER SIMILAR TO A STATE IDENTIFICATION CARD FOR PURPOSES OF CERTAIN STATE LAWS; AND AMENDING SECTIONS 16-3-322, 16-6-305, 30-14-1704, 33-19-321, 45-6-332, 45-8-206, 45-8-322, 61-3-101, 61-3-216, 61-5-206, 61-5-302, 87-2-106, AND 87-2-202, MCA.

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

**Section 1.** Section 16-3-322, MCA, is amended to read:

**“16-3-322. Recordkeeping.** (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser’s name, address, and date of birth and the number of the purchaser’s driver’s license, state-issued or military identification card, *tribal identification card*, or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale;

[(d) the keg identification number required under 16-3-321]; and

(e) the purchaser’s signature and date of purchase.

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to 16-3-323.”

**Section 2.** Section 16-6-305, MCA, is amended to read:

**“16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider.** (1) (a) Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under 21 years of age by ~~his~~ *the person’s* parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a person under 21 years of age.

(b) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

(c) For the purposes of this section, “intoxicating quantity” means a quantity of an alcoholic beverage that is sufficient to produce:

(i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

(ii) substantial or visible mental or physical impairment.

(2) ~~Any~~ A person is guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person;

(b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for ~~him~~ *the person*; or

(c) holds out the person to be 21 years of age or older to the owner of the establishment or ~~his or her~~ *to the owner's* employee ~~or employees~~.

(3) It is unlawful for any person to fraudulently misrepresent ~~his or her~~ *the person's* age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card, *including a tribal identification card*.

(4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the result of the intoxicated condition created by the violation. (See compiler's comments for contingent termination of certain text.)"

**Section 3.** Section 30-14-1704, MCA, is amended to read:

**"30-14-1704. Computer security breach.** (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data system immediately following discovery if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay in notification. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

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

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) social security number;

(B) driver's license number, ~~or~~ state identification card number, *or tribal identification card number*;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) (a) For purposes of this section, notice may be provided by one of the following methods:

(i) written notice;

(ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001;

(iii) telephonic notice; or

(iv) substitute notice, if the person or business demonstrates that:

(A) the cost of providing notice would exceed \$250,000;

(B) the affected class of subject persons to be notified exceeds 500,000; or

(C) the person or business does not have sufficient contact information.

(b) Substitute notice must consist of the following:

(i) an electronic mail notice when the person or business has an electronic mail address for the subject persons; and

(ii) conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; or

(iii) notification to applicable local or statewide media.

(6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and that does not unreasonably delay notice is considered to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the data system.

(7) If a business discloses a security breach to any individual pursuant to this section and gives a notice to the individual that suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual from a consumer credit reporting agency, the business shall coordinate with the consumer reporting agency as to the timing, content, and distribution of the notice to the individual. The coordination may not unreasonably delay the notice to the affected individuals."

**Section 4.** Section 33-19-321, MCA, is amended to read:

**"33-19-321. Computer security breach.** (1) Any licensee or insurance-support organization that conducts business in Montana and that owns or licenses computerized data that includes personal information shall provide notice of any breach of the security of the system following discovery or

notice of the breach of the security of the system to any individual whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The notice must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person to whom personal information is disclosed in order for the person to perform an insurance function pursuant to this part that maintains computerized data that includes personal information shall notify the licensee or insurance-support organization of any breach of the security of the system in which the data is maintained immediately following discovery of the breach of the security of the system if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and requests a delay of notice. The notice required by this section must be made after the law enforcement agency determines that the notice will not compromise the investigation.

(4) Licensees, insurance-support organizations, and persons to whom personal information is disclosed pursuant to this part shall develop and maintain an information security policy for the safeguarding of personal information and security breach notice procedures that provide expedient notice to individuals as provided in subsection (1).

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

(a) "Breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a licensee, insurance-support organization, or person to whom information is disclosed pursuant to this part. Acquisition of personal information by a licensee, insurance-support organization, or employee or agent of a person as authorized pursuant to this part is not a breach of the security of the system.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name and the data elements are not encrypted:

(A) social security number;

(B) driver's license number, ~~or~~ state identification *card* number, *or tribal identification card number*;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

**Section 5.** Section 45-6-332, MCA, is amended to read:

**"45-6-332. Theft of identity.** (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services,

financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less than \$1,000 was gained or attempted to be gained shall be fined an amount not to exceed \$1,000, imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of the offense of theft of identity if an economic benefit of \$1,000 or more was gained or attempted to be gained shall be fined an amount not to exceed \$10,000, imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) As used in this section, "personal identifying information" includes but is not limited to the name, date of birth, address, telephone number, driver's license number, social security number or other federal government identification number, *tribal identification card number*, place of employment, employee identification number, mother's maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant."

**Section 6.** Section 45-8-206, MCA, is amended to read:

**"45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; ~~provided, however~~ *However*, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) ~~he~~ *the person* had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, *tribal identification card*, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or

performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.”

**Section 7.** Section 45-8-322, MCA, is amended to read:

**“45-8-322. Application, renewal, permit, and fees.** (1) The application form must be readily available at the sheriff’s office and must read as follows:

**CONCEALED WEAPON PERMIT APPLICATION**

To be completed by each person making application:

- RESIDENT OF MONTANA AT LEAST 6 MONTHS      ( ) Yes    ( ) No
- CITIZEN OF THE UNITED STATES                    ( ) Yes    ( ) No
- 18 YEARS OF AGE OR OLDER                      ( ) Yes    ( ) No

PLEASE TYPE OR PRINT

Full name:.....

Last	First	Middle
------	-------	--------

Alias/Maiden/Nickname: .....

Address: Home: ..... Zip .....

Employer: ..... Zip .....

Phone: ...../ ...../ .....

Home	Employer	Message
------	----------	---------

Place of birth: ..... Date of birth: .....

Driver’s license #: ..... Issuing state: .....

Social Security #: .....

Sex ..... Ht. .... Wt. .... Eyes ..... Hair .....

**LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:**

	Employer or business name	Address	Dates of employment
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....



LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....

MILITARY SERVICE, BRANCH ..... FROM ..... TO .....

TYPE OF DISCHARGE ..... RANK UPON DISCHARGE .....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

	City	State	Charge	Date
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....
4.	.....	.....	.....	.....
5.	.....	.....	.....	.....

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....

PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

.....

.....

.....

.....

.....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either

public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....  
Signature

.....  
Date of application

This application must be signed in the presence of the sheriff or a designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is \$50. The permit must be renewed for additional 4-year periods upon payment of a \$25 fee *per for each* renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must, at a minimum, include the name, address, physical description, signature, driver's license *number, or* state identification card number, *or tribal identification card number*, and a picture of the permittee. A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a background check of an applicant to determine whether the applicant is eligible for a permit under 45-8-321, may require an applicant to submit the applicant's fingerprints, and may charge the applicant \$5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit."

**Section 8.** Section 61-3-101, MCA, is amended to read:

**"61-3-101. Duties of department — records.** (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile must contain the following information:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department, *by a tribal government*, or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, including, as pertinent to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile:

(i) the manufacturer of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(ii) the manufacturer's designation of the style of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, if applicable, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as shown by the manufacturer;

(vi) the distinctive license number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile must contain, at a minimum, the following information:

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data considered to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to motor vehicles, trailers, semitrailers, pole trailers, motorboats, personal watercraft, sailboats, or snowmobiles that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, motor vehicle records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.”

**Section 9.** Section 61-3-216, MCA, is amended to read:

**“61-3-216. Certificates of title — application — contents — issuance.**

(1) The owner of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department, *a tribal government*, or a motor vehicle agency of another jurisdiction, the owner's driver's license number or identification card number and the name of the jurisdiction issuing the license or card; or

(ii) if the owner is a corporation, the name of the corporation's registered agent's and, if the agent is the holder of a driver's license or identification card,

the agent's driver's license number or identification card number and the name of the jurisdiction issuing the license or card;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, including, as available and pertinent to the vehicle:

(i) the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile make, model, manufacturer's designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading, if applicable, at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, if applicable, as determined by the manufacturer;

(iv) whether the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was new or used at the time of transfer; and

(v) for a trailer operating intrastate, its declared weight;

(c) the date on which the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was purchased by or was transferred to the applicant, the name and address of the person from whom the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner submits a separate request for issuance of the certificate of title.

(3) If the application is for a certificate of title to a new motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the current registration receipt for the motorboat, personal watercraft, sailboat, or snowmobile, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, sailboat, or snowmobile from the immediate prior owner to the applicant."

**Section 10.** Section 61-5-206, MCA, is amended to read:

**"61-5-206. Authority of department to suspend license or driving privilege — right to hearing.** (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(b) has falsified the licensee's date of birth on the application for a driver's license;

(c) is under 21 years of age and has altered the licensee's or another's driver's license, ~~or~~ identification card, *or tribal identification card* to obtain alcohol; or

(d) has authorized another to use the licensee's driver's license, ~~or~~ identification card, *or tribal identification card* to obtain alcohol.

(2) If the department suspends a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any traffic violation by a person who holds a probationary driver's license under 61-2-302, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of

suspension or, for good cause, may affirm, reduce, or extend the period of suspension of the license.”

**Section 11.** Section 61-5-302, MCA, is amended to read:

**“61-5-302. Unlawful use of license or identification card.** It is a misdemeanor for a person to:

(1) display or cause or permit to be displayed or have in the person’s possession a canceled, revoked, suspended, fictitious, or altered driver’s license, ~~or~~ identification card, *or tribal identification card*;

(2) lend the person’s driver’s license, ~~or~~ identification card, *or tribal identification card* to any other person or knowingly permit its use by another;

(3) display or represent as one’s own any driver’s license, ~~or~~ identification card, *or tribal identification card* not issued to the person;

(4) fail or refuse to surrender to the department upon its lawful demand a driver’s license or identification card that has been suspended, revoked, or canceled;

(5) use a false or fictitious name in an application for a driver’s license or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in an application; or

(6) permit any unlawful use of a driver’s license, ~~or~~ identification card, *or tribal identification card* issued to the person.”

**Section 12.** Section 87-2-106, MCA, is amended to read:

**“87-2-106. Application for license — penalties for violation — forfeiture of privileges.** (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant’s name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver’s license, Montana driver’s examiner’s identification card, *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) 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.

(8) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (7) shall be:

(i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (8)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(9) 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.

[ (10) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(11) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)”

**Section 13.** Section 87-2-202, MCA, is amended to read:

**“87-2-202. 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 14. 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.

Approved April 10, 2007

## CHAPTER NO. 181

[HB 803]

AN ACT PROVIDING THAT THE INFORMATION AND COMMUNICATION PROGRAM OF THE BOARD OF VETERANS' AFFAIRS MAY INCLUDE INFORMATION RELATED TO DEPLETED URANIUM EXPOSURE; AMENDING SECTION 10-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 10-2-102, MCA, is amended to read:

**"10-2-102. Duties of board — employee qualifications.** (1) The board shall establish a statewide service for veterans and their families as provided in this section. The board shall:

(a) actively cooperate with local, state, and federal agencies whose services encompass the affairs of veterans and their families;

(b) promote the general welfare of all veterans and their families;

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) *information to assist veterans and their family members in obtaining federal benefits and treatment services related to depleted uranium exposure, including a best practice health screening of any veteran who:*

(A) *has been identified pursuant to department of defense policy as having possible level I, II, or III exposure to depleted uranium;*

(B) *is referred for a health screening by a military physician; or*

(C) *may have been exposed to depleted uranium during service in a combat zone.*

~~(iii)~~(iv) an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

~~(iv)~~(v) a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in 10-2-112 and 10-2-603, and a review of the veterans' affairs budget.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, the Vietnam conflict, or other period of conflict involving the United States military overseas and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board."

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

Approved April 10, 2007

## CHAPTER NO. 182

[SB 60]

AN ACT REVISING AND CLARIFYING THE GOVERNOR'S ENERGY EMERGENCY AUTHORITY RELATED TO A PRICE OF ENERGY; AND AMENDING SECTIONS 10-3-312 AND 90-4-302, MCA.

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

**Section 1.** Section 10-3-312, MCA, is amended to read:

**"10-3-312. Maximum expenditure by governor — appropriation.** (1) Whenever an emergency, *including an energy emergency as defined in 90-4-302, or a disaster* is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed \$16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

**Section 2.** Section 90-4-302, MCA, is amended to read:

**"90-4-302. Definitions.** As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for the marketing of petroleum products and that has a total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means:

(a) an existing or imminent domestic, regional, or national shortage of energy ~~or a price of energy~~ that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users or to increase the available supply of energy; *or*

(b) *a price of energy that will:*

(i) *result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy; or*

(ii) *impose a threat to the health or safety of those segments of the population who are most in need, as defined by their economic, social, or medical circumstances.*

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies ~~or the price of energy~~ within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions or action is taken to increase the supply of energy.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(9) “Petroleum products” means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

(10) “Prime petroleum supplier” means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

(11) “Refiner” means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(12) “Refinery” means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals.”

Approved April 10, 2007

## CHAPTER NO. 183

[SB 77]

AN ACT REVISING LEGISLATIVE REPORTING REQUIREMENTS RELATED TO THE FUTURE FISHERIES IMPROVEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SUBMIT ITS DETAILED PROGRAM REPORT TO CERTAIN LEGISLATIVE COMMITTEES, TO INCLUDE SPECIFIC INFORMATION REGARDING PROGRESS AND PROJECTS RELATED TO THE RESTORATION OF NATIVE MONTANA FISH SPECIES, TO IDENTIFY ANY PROJECT THAT INVOLVES STREAM REMEDIATION FROM MINING ACTIVITIES, AND TO INCLUDE PARTICULAR FUNDING INFORMATION; AMENDING SECTION 87-1-272, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 87-1-272, MCA, is amended to read:

**“87-1-272. (Temporary) Future fisheries improvement program — funding priority — reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana’s fisheries.

(2) The department shall ~~by April 1, 1996, and thereafter~~ when projects are suggested by the future fisheries review panel, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on

private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

- (a) for negotiations with landowners, local officials, citizens, and others;
- (b) for coordination with other agencies that may be involved in projects conducted under this section; and
- (c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public access to the report.

(b) The department shall also present a detailed report to *the senate fish and game committee, the house fish, wildlife, and parks committee, and the natural resources and commerce joint appropriations subcommittee* of each regular session of the legislature on the progress of the future fisheries improvement program *and shall include specific information regarding progress and projects related to the restoration of native Montana fish species.* The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program. *The department shall include a listing of the funding source for each project funded since the last report and shall identify any project that involves stream remediation from mining activities. All financial information presented in the legislative report must conform to the requirements of the state accounting, budgeting, and human resources system.*

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees. (Terminates July 1, 2009—sec. 6, Ch. 529, L. 1999.)”

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

**Section 3. Termination.** [This act] terminates July 1, 2009.

Approved April 10, 2007

## CHAPTER NO. 184

[SB 164]

AN ACT CLARIFYING THE DISTINCTION BETWEEN THE POWERS AND DUTIES OF ASSIGNED COUNSEL AND A GUARDIAN AD LITEM IN

PROCEEDINGS TO ADJUDICATE INCAPACITY AND TO PROTECT PROPERTY OF MINORS AND PERSONS UNDER DISABILITY; AMENDING SECTIONS 72-5-315 AND 72-5-408, 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 72-5-315, MCA, is amended to read:

**“72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights.** (1) The incapacitated person or any person interested in the incapacitated person’s welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person’s own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding. ~~The official or assigned counsel has the powers and duties of a guardian ad litem.~~

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor’s report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to reevaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person’s affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person’s condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person’s counsel requests it.”

**Section 2.** Section 72-5-408, MCA, is amended to read:

**“72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act,

Title 47, chapter 1, to represent the minor. ~~Counsel assigned to represent a minor also has the powers and duties of a guardian ad litem.~~

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. ~~Assigned counsel has the powers and duties of a guardian ad litem.~~ If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.”

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

**Section 4. Applicability.** [This act] applies to appointments on or after [the effective date of this act].

Approved April 10, 2007

## CHAPTER NO. 185

[SB 170]

AN ACT EXTENDING THE TERMINATION DATE OF THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003, AND SECTION 1, CHAPTER 23, LAWS OF 2005.

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

**Section 1.** Section 4, Chapter 81, Laws of 2003, is amended to read:

“**Section 4. Termination.** [This act] terminates December 31, ~~2006~~ 2010.”

**Section 2.** Section 1, Chapter 23, Laws of 2005, is amended to read:

“**Section 1.** Section 4, Chapter 81, Laws of 2003, is amended to read:

“**Section 4. Termination.** [This act] terminates December 31, ~~2006~~ 2008 2010.””

Approved April 10, 2007



## CHAPTER NO. 186

[SB 203]

AN ACT ALLOWING A COUNTY SHERIFF OR THE SHERIFF'S DESIGNEE TO AUTHORIZE THE PARTICIPATION OF CIVIL AIR PATROL CADETS IN SEARCH AND RESCUE OPERATIONS; AMENDING SECTION 7-32-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-32-235, MCA, is amended to read:

**“7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding.** (1) A county may establish or recognize one or more search and rescue units within the county.

(2) (a) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(b) *A county sheriff or the sheriff's designee may authorize the participation of members of the civil air patrol, including cadets under 18 years of age, in search and rescue operations.*

(3) Subject to 15-10-420, a county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax on the taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held as provided in 15-10-425.”

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

Approved April 10, 2007

## CHAPTER NO. 187

[SB 245]

AN ACT INCREASING THE DEBT LIMITS FOR COUNTIES, CONSOLIDATED MUNICIPALITIES, AND CITIES OR TOWNS; AMENDING SECTIONS 7-3-1321, 7-7-2101, 7-7-4201, 7-14-2524, AND 7-14-2525, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 7-3-1321, MCA, is amended to read:

**“7-3-1321. Authorization to incur indebtedness — limitation.** (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate that exceeds ~~1.51%~~ 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the municipality, as ascertained by the last assessment for state and county taxes prior to incurring indebtedness. All

warrants, bonds, or obligations in excess of the amount given by or on behalf of the municipality are void.”

**Section 2.** Section 7-7-2101, MCA, is amended to read:

**“7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds ~~1.4%~~ 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402 and 7-21-3413, a county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.”

**Section 3.** Section 7-7-4201, MCA, is amended to read:

**“7-7-4201. Limitation on amount of bonded indebtedness.** (1) Except as provided in 7-7-4202, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness exceeds ~~1.51%~~ 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town.”

**Section 4.** Section 7-14-2524, MCA, is amended to read:

**“7-14-2524. Limitation on amount of bonds issued.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds 0.68% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) A county may issue bonds in an amount that, with all outstanding bonds and warrants, exceeds 0.68% but does not exceed ~~1.4%~~ 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed ~~1.4%~~ 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.”

**Section 5.** Section 7-14-2525, MCA, is amended to read:

**“7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds ~~1.4%~~ 2.5%

of the total assessed value of taxable property, determined as provided in 15-8-111, within the county and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds.”

**Section 6. Effective date.** [This act] is effective July 1, 2007.

Approved April 10, 2007

## CHAPTER NO. 188

[SB 341]

AN ACT REVISING GOVERNMENTAL PROCUREMENT PROCEDURES TO ALLOW FOR THE BIENNIAL SELECTION OF FIRMS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES; AND AMENDING SECTION 18-8-204, MCA.

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

**Section 1.** Section 18-8-204, MCA, is amended to read:

**“18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually *or biennially* a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in 60-2-135 through 60-2-137.”

Approved April 10, 2007

## CHAPTER NO. 189

[SB 466]

AN ACT PROVIDING THAT ECONOMIC IMPACT STATEMENTS REQUESTED BY AN ADMINISTRATIVE RULE REVIEW COMMITTEE CONSIDER THE POTENTIAL IMPACT OF A RULE ON AFFECTED SMALL BUSINESSES; AND AMENDING SECTION 2-4-405, MCA.

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

**Section 1.** Section 2-4-405, MCA, is amended to read:

**“2-4-405. Economic impact statement.** (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate.

(2) Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons, including but not limited to providers of services under contracts with the state *and affected small businesses*, and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections ~~(1)(a)~~ ~~(2)(a)~~ through ~~(1)(g)~~ ~~(2)(g)~~ are based and an explanation of how the data was gathered.

~~(2)(3)~~ A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

~~(3)(4)~~ Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

~~(4)(5)~~ This section does not apply to rulemaking pursuant to 2-4-303.

~~(5)(6)~~ The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

~~(6)(7)~~ An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

Approved April 10, 2007

## CHAPTER NO. 190

[SB 467]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF INVESTMENTS; ADDING LEGISLATIVE LIAISONS TO THE BOARD; AMENDING SECTION 2-15-1808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-1808, MCA, is amended to read:

**"2-15-1808. Board of investments — allocation — composition — quasi-judicial.** (1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in 2-15-121. The board may employ a chief investment officer and an executive director who have

general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The board shall prescribe the duties and annual salaries of the chief investment officer, executive director, and ~~six~~ six professional staff positions. The chief investment officer, executive director, and ~~six~~ six professional staff serve at the pleasure of the board.

(3) The board is composed of ~~nine~~ nine members appointed by the governor, as prescribed in 2-15-124, and two *ex officio nonvoting members*. The members are:

(a) one member from the public employees' retirement board, provided for in 2-15-1009, and one member from the teachers' retirement board provided for in 2-15-1010. If either member of the *respective retirement boards* ceases to be a member of the retirement board, the position of that member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with 2-15-124.

~~(b) seven members who will provide a balance of professional expertise and public interest and accountability, who are informed and experienced in the subject of investments, and who are representative of:~~

~~(i) the financial community;~~

~~(ii) small business;~~

~~(iii) agriculture; and~~

~~(iv) labor.~~

*(b) seven members who will provide a balance of professional expertise and public interest and accountability, who are informed and experienced in the subject of investments, and who are representatives of:*

*(i) the financial community;*

*(ii) small business;*

*(iii) agriculture; and*

*(iv) labor; and*

*(c) two ex officio nonvoting legislative liaisons to the board, of which one must be a senator appointed by the president of the senate and one must be a representative appointed by the speaker of the house. The liaisons may not be from the same political party. Preference in appointments is to be given to legislators who have a background in investments or finance. The legislative liaisons shall serve from appointment through each even-numbered calendar year and may attend all board meetings. Legislative liaisons appointed pursuant to this subsection (3)(c) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the legislative council.*

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."

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

Approved April 10, 2007

## CHAPTER NO. 191

[HB 242]

AN ACT CHANGING THE DEADLINE FOR A WRITE-IN CANDIDATE TO FILE A DECLARATION OF INTENT; AMENDING SECTION 13-10-211, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 13-10-211, MCA, is amended to read:

**“13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the ~~15th~~ 10th day before *the date established under 13-13-205 on which a ballot must be available for absentee voting* for the election and must contain:

- (a) (i) the candidate’s first and last names;
- (ii) the candidate’s initials, if any, used instead of a first name, or first and middle name, and the candidate’s last name;
- (iii) the candidate’s nickname, if any, used instead of a first name, and the candidate’s last name; and
- (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate’s last name;
- (b) the candidate’s mailing address;
- (c) a statement declaring the candidate’s intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate’s signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

- (a) dies;
- (b) withdraws from the election; or
- (c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall

notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent 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.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

**Section 2. Applicability.** [This act] applies to elections held after January 1, 2008.

Approved April 11, 2007

## CHAPTER NO. 192

[SB 225]

AN ACT ALLOWING SPECIAL SCHOOL ELECTIONS ON A DATE OTHER THAN THE REGULAR SCHOOL ELECTION DAY IN ORDER FOR THE ELECTORS TO CONSIDER A PROPOSITION REQUESTING ADDITIONAL FUNDING; AMENDING SECTION 20-20-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

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

**Section 1.** Section 20-20-105, MCA, is amended to read:

**"20-20-105. Regular school election day and special school elections — limitation — exception.** (1) *The Except as provided in subsection (4), the first Tuesday after the first Monday of May of each year is the regular school election day. Except as provided in subsections (3) and (4), a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.*

(2) Subject to the provisions of subsection (1), special school elections may be conducted at times determined by the trustees.

(3) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (1), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-322(5).

(4) *In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order the election on a date other than the regular school election day in order for the electors to consider a proposition requesting additional funding under 20-9-353."*

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



**Section 3. Extension of school election deadlines — applicability.** In order to allow for the more orderly and efficient conduct of the regular school elections scheduled for May 8, 2007, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2007 only, a school district may limit the regular school election scheduled for May 8, 2007, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. For any levy election rescheduled under this section, a resolution calling for the election may not be adopted later than 20 days before the scheduled election and final ballot language may not be adopted later than 10 days before the date of the election. In addition, all statutory deadlines for the May 2007 regular school election are extended to April 27, 2007.

Approved April 11, 2007

## CHAPTER NO. 193

[SB 536]

AN ACT PROVIDING THAT LOCAL GOVERNMENT ENTITIES, MUNICIPAL UTILITIES, OR COMPETITIVE ELECTRICITY SUPPLIERS MAY NOT USE EMINENT DOMAIN TO ACQUIRE EXISTING TELEPHONE OR ELECTRICAL ENERGY LINES AND APPURTENANT FACILITIES OWNED BY A PUBLIC UTILITY OR COOPERATIVE FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING ELECTRICITY OR PROVIDING TELECOMMUNICATIONS SERVICES; AMENDING SECTION 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 70-30-102, MCA, is amended to read:

**“70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines, *except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;*

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.”

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

Approved April 11, 2007

## CHAPTER NO. 194

[SB 291]

AN ACT REVISING THE MORATORIUM ON NEW SCHOOL DISTRICTS TO ALLOW CREATION UNDER CERTAIN CIRCUMSTANCES OF A HIGH

SCHOOL DISTRICT SOLELY FOR THE PURPOSE OF EXPANDING AN ELEMENTARY DISTRICT INTO A K-12 SCHOOL DISTRICT; PROVIDING FOR THE DISPOSITION OF DISTRICT BONDED INDEBTEDNESS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING PROCEDURES FOR CREATION OF A HIGH SCHOOL DISTRICT BY TRUSTEE RESOLUTION; AMENDING SECTIONS 20-6-104, 20-9-366, 20-9-439, AND 20-9-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Procedure for creation of high school district solely for expansion into K-12 school district — trustee resolution.** (1) An existing elementary district may create a high school district solely for the purpose of expanding an elementary district into a K-12 district only if:

(a) the nearest elementary school building is located at a distance of at least 40 miles from the nearest accessible high school;

(b) the trip from the nearest elementary school building to the nearest accessible high school is 60 minutes or more over the shortest passable route;

(c) periodically during the school year, the condition of the road makes it impractical to attend the nearest accessible high school; and

(d) at least 50 high school students reside in the elementary district; and

(e) the taxable valuation and boundaries of the combining elementary and high school district are the same.

(2) The creation of a new high school district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition to create a high school district solely for the purpose of expanding the elementary school district into a K-12 district. Approval of the proposition results in a tax levy for payments as provided in subsection (6)(b).

(3) If the proposition for the expansion and the transition levy provided for in 20-9-502(6) is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, the county superintendent shall order the creation of the high school district and oversee the expansion of the high school district into a K-12 district pursuant to 20-6-701.

(4) The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district.

(5) If a new district is created, the effective date of its creation is the following July 1. The trustees of the elementary district must be designated as the trustees of the new K-12 district.

(6) Until the first school fiscal year in which the new K-12 district enrolls high school students in all grades, the existing high school district shall provide high school instruction to students residing in the newly created K-12 district with the K-12 district paying the existing high school district:

(a) tuition and transportation charged pursuant to the provisions of 20-5-320 and 20-5-321; and

(b) an amount equal to the BASE general fund mills for the existing high school district assessed against the taxable valuation in the new K-12 district and funded using a building reserve fund levy for transition costs as provided in 20-9-502. The payment to the existing high school district must be deposited in the district general fund and used to reduce the BASE budget levy.

(7) If bonded indebtedness has been approved by the voters of the existing high school district prior to [the effective date of this act] but the bonds have not been sold prior to the creation of the new K-12 district, then the future indebtedness of those bonds when those bonds are sold must be paid by levies on the original territory.

(8) If the K-12 school district does not open and operate a high school within 3 years after the effective date of the creation of the new district, the order of the county superintendent creating a new district under this section is void, the new district ceases to exist, and the trustees of the new district have no capacity to act. Those trustees retain authority as trustees of the elementary district.

**Section 2.** Section 20-6-104, MCA, is amended to read:

**“20-6-104. Moratorium on creation of new district — exception exceptions.** (1) *Except as provided in subsections (2) and (3), a school district may not initiate the creation of a new elementary district or a new high school district.*

(2) *Pursuant to the provisions of [section 1], the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.*

(2)(3) ~~This section~~ *The moratorium in subsection (1) does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704.”*

**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 subject to the creation of a new school district under [section 1]*, 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 [section 1]*, 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 175% 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.** Section 20-9-439, MCA, is amended to read:

**"20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.** *Subject to [section 1], the following provisions apply:*

(1) The county superintendent shall compute the levy requirement for each school district's general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county.”

**Section 5.** Section 20-9-502, MCA, is amended to read:

**“20-9-502. Purpose and authorization of building reserve fund by election — levy for school transition costs.** (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, for the purpose of purchasing land needed for school purposes in the district, or for the purpose of funding school transition costs as provided in ~~subsection~~ *subsections* (5) and (6). In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(2) The total amount of building reserve, less the amount provided for in subsection (5), when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. Except as provided in ~~subsection~~ *subsections* (5)(b) and (6), a building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

- (i) open a new school under the provisions of Title 20, chapter 6;
- (ii) close a school;
- (iii) replace a school building; or
- (iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.

(b) Except as provided in ~~subsection~~ *subsections (5)(c) and (6)*, the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. ~~The~~ *Except as provided in subsection (6), the duration of the levy for transition costs may not exceed 6 years.*

(c) If the levy for transition costs is for consolidation or annexation:

- (i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and
- (ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

*(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by [section 1(6)(b)] when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to [section 1(2)]. The levy is limited to the amount required by [section 1(6)(b)] for a period not to exceed 3 years."*

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20, chapter 6, part 3, apply to [section 1].

**Section 7. Effective date — applicability.** [This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act].

Approved April 12, 2007



**CHAPTER NO. 195**

[HB 35]

AN ACT PROVIDING ASSISTANCE TO VICTIMS OF IDENTITY THEFT; CLARIFYING THE PROCESS FOR LAW ENFORCEMENT IN RELATION TO IDENTITY THEFT PASSPORTS; REQUIRING LAW ENFORCEMENT TO TAKE REPORTS IN IDENTITY THEFT CASES; EXPANDING THE APPLICATION OF THE IDENTITY THEFT PASSPORT PROGRAM TO ALL STATE RESIDENTS; PROVIDING THAT AN IDENTITY THEFT PASSPORT IS EQUIVALENT TO A POLICE REPORT OR INVESTIGATIVE REPORT; PROVIDING PENALTIES FOR FALSE REPORTS; REQUIRING CONSUMER REPORTING AGENCIES TO BLOCK INFORMATION RESULTING FROM IDENTITY THEFT; ALLOWING A VICTIM OF IDENTITY THEFT TO REQUEST THAT RECORDS OF ARREST OR CONVICTION BE EXPUNGED IN CERTAIN CIRCUMSTANCES; PROVIDING FOR INSURANCE PREMIUM REFUNDS UPON EXPUNGEMENT; AND AMENDING SECTION 46-24-220, MCA.

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

**Section 1. Identity theft report — process — investigation.** (1) A law enforcement agency that receives a report of identity theft, as described in 45-6-332, from a victim of identity theft shall request two forms of identification sufficient to determine the identity of the victim. The forms of identification may include but are not limited to:

(a) a driver's license or other current, valid photo identification card, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification that shows the individual's name;

(b) a birth certificate; or

(c) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and address.

(2) The law enforcement agency shall:

(a) notwithstanding subsection (1), immediately begin to investigate the report of identity theft, based upon whatever proof of identity the victim is able to provide, if any, at the time of making the report and proceed with the investigation as far as the agency is able;

(b) within 72 hours of receiving an identity theft victim's complaint, provide to the victim one copy of the police report, law enforcement investigative report, or filed complaint; and

(c) as provided in 46-24-220, send another copy along with the victim's completed application for an identity theft passport to the attorney general.

(3) Within 72 hours after making the report of identity theft, the victim shall provide the forms of identification requested pursuant to subsection (1). If the victim is unable to provide that identification within that time, the victim shall explain to the law enforcement agency receiving the report why the victim is unable to provide those forms of identification.

(4) The law enforcement agency shall take a complaint as provided under subsection (1) even if jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft. The law enforcement agency that takes the complaint may refer the complaint to a law enforcement agency that has apparent jurisdiction.

(5) (a) The law enforcement agency with which the original police report, investigative report, or complaint is filed shall cooperate fully with other law enforcement agencies of the same or another jurisdiction and investigate the identity theft within its resources.

(b) A complaint filed under this section is not required to be counted as an open case for purposes of compiling open case statistics.

**Section 2.** Section 46-24-220, MCA, is amended to read:

**“46-24-220. Identity theft passport — application — issuance — uses — penalty for false report.** (1) (a) The attorney general, in cooperation with any law enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this state ~~and or to a resident of this state~~ who has filed a police report *in this state or another state* citing that the person is a victim of ~~a violation of identity theft as described in 45-6-332.~~

(b) A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through any law enforcement agency. The agency shall send a copy of the police report and the application to the attorney general.

(c) *For a resident who became an identity theft victim in another state, the victim may apply directly to the department of justice and shall provide a copy of the police report or other substantial evidence of having filed a complaint.*

(d) The attorney general shall process the application and supporting report and may issue the victim an identity theft passport in the form of a card or certificate.

(2) (a) A victim of identity theft may present the victim’s identity theft passport issued under subsection (1) to any of the following:

(i) a law enforcement agency to help prevent the victim’s arrest or detention for an offense committed by someone other than the victim who is using the victim’s identity;

(ii) any of the victim’s creditors to aid in the creditors’ investigation and establishment of whether fraudulent charges were made against accounts in the victim’s name or whether accounts were opened using the victim’s identity; or

(iii) a consumer reporting agency, as defined in 31-3-102, which shall accept the passport as the direct conveyance of a dispute under 31-3-124 and shall include notice of the dispute in all future reports that contain disputed information caused by identity theft.

(b) Acceptance of the identity theft passport presented by the victim to a law enforcement agency or creditor pursuant to subsection (2)(a) is at the discretion of the law enforcement agency or creditor. A law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(c) *An identity theft passport is equivalent to a police report or investigative report when a police report or investigative report is required as proof that the holder is a victim of identity theft.*

(3) An application made with the attorney general pursuant to subsection (1), including any supporting documentation, is confidential criminal justice information, as defined in 44-5-103, and must be disseminated accordingly.

(4) The attorney general shall adopt rules to implement this section. The rules must include a procedure by which the attorney general is assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

(5) *A person who knowingly gives a false report to obtain an identity theft passport is guilty of a felony and upon conviction shall be punished as provided by law and by revocation of the passport."*

**Section 3. Block of information on credit report.** (1) Within 30 days after a consumer reporting agency receives from a consumer a complaint of identity theft and documentation as provided in subsection (2), the consumer reporting agency shall permanently block any information that the consumer identifies from the consumer's report that resulted from identity theft as defined in 45-6-332.

(2) To request a block of information on a consumer report, a consumer shall provide a consumer reporting agency with:

(a) a copy of a police report or an identity theft passport as provided in 46-24-220;

(b) the specific description of information that is to be blocked because it was a result of a violation of 45-6-332.

(3) A consumer reporting agency shall notify the person furnishing the information that a police report has been filed and that a block has been requested and shall notify the person of the effective date of the block.

(4) A consumer reporting agency may decline to block information or may rescind any block of information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that:

(a) the information was blocked because of a misrepresentation of fact by the consumer in requesting the block under this section;

(b) the consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

(c) the consumer knowingly obtained possession of goods, services, or money as a result of the transaction for which information was blocked or the consumer should have known that possession of goods, services, or money occurred because of the transaction for which information was blocked.

(5) If a consumer reporting agency declines to block information or rescinds a blocking of information under this section, the consumer reporting agency shall notify the consumer promptly in the same manner as required in 15 U.S.C. 1681i. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money.

(6) In order to facilitate a consumer's right to block information as provided in subsection (1), a law enforcement agency shall provide to the consumer at the consumer's request a copy of a police report filed by the consumer that indicates that the consumer is a victim of 45-6-332.

**Section 4. Application to expunge record — identity theft passport required — notice — fee waiver — rules.** (1) A victim of identity theft, as described in 45-6-332, may apply to a district court to expunge from the victim's record any records or entries relating to a charge or conviction in which another

person used personal identifying information of the victim to commit an offense or violation, including records or entries relating to a charge or conviction that was dismissed or set aside.

(2) A victim who applies to have a record expunged shall provide to the court an identity theft passport as provided under 46-24-220 and other documents or information necessary to establish that the charge or conviction referred to in subsection (1) was the result of a person using the personal identifying information of the victim to commit the offense or violation.

(3) After granting the expungement, the court shall forward a copy of the expungement order to the department of justice. Upon receipt of the court order, the department shall expunge the pertinent records.

(4) Notwithstanding any other provision of law, a victim seeking expungement under this section may not be charged a fee by the court.

(5) The department of justice may adopt rules to implement procedures regarding law enforcement agency procedures for handling the expunged records.

**Section 5. Refund for expunged record.** An insurance company that charges an additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged because of identity theft pursuant to [section 4] shall refund the additional premiums to the policyholder upon notification and verification of the expungement.

**Section 6. Codification instruction.** (1) [Sections 1 and 4] are intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 1 and 4].

(2) [Section 3] is intended to be codified as an integral part of Title 31, chapter 3, part 1, and the provisions of Title 31, chapter 3, part 1, apply to [section 3].

(3) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 5].

Approved April 17, 2007

## CHAPTER NO. 196

[HB 99]

AN ACT INCREASING FEES FOR LICENSING OF WEIGHING DEVICES;  
AND AMENDING SECTION 30-12-203, MCA.

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

**Section 1.** Section 30-12-203, MCA, is amended to read:

**“30-12-203. Licensing of weighing devices.** (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by applying to the department upon a form provided by the department. Each license must require at least one inspection a year.

(3) An application must be accompanied by the proper fee as established by this section, except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less .....	\$12.00 \$16
500 pounds through 1,999 pounds .....	20.00 26
2,000 pounds through 7,999 pounds .....	40.00 51
8,000 pounds through 60,000 pounds .....	100.00 130
60,001 pounds or more .....	175.00 225

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses are annual and, except for those described in subsection (5)(b), expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) Licenses for on-farm scales expire at the end of the calendar year.

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) for on-farm scales, before the first day of the sixth month of the year in which the license fee is due; or

(ii) for all other licenses, within 60 days of the anniversary date.

(b) If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.

(c) A person may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part."

Approved April 17, 2007

CHAPTER NO. 197

[HB 113]

AN ACT REVISING LIQUOR LICENSING LAWS TO ELIMINATE THE RESIDENCE REQUIREMENT FOR LIQUOR LICENSES AND TO ALLOW ALL ENTITIES TO OBTAIN A LIQUOR LICENSE; REQUIRING SUITABLE FUNDING SOURCES FOR INDIVIDUAL APPLICANTS; CLARIFYING OTHER APPLICATION REQUIREMENTS FOR OWNERS, STOCKHOLDERS, PARTNERSHIPS, AND MEMBERS OF DIFFERENT BUSINESS ENTITIES; AND AMENDING SECTION 16-4-401, MCA.

WHEREAS, the Montana District Court decision in Hotel Venture East v. State, Cause No. CDV-2002-493(2005), requires the elimination of the residence requirement for liquor licenses.

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

Section 1. Section 16-4-401, MCA, is amended to read:

**“16-4-401. License as privilege — criteria for decision on application.** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section, in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) ~~in the case of~~ *if the applicant is* an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

~~(iv) the applicant is a resident of the state and is qualified to vote in a state election;~~

~~(v)~~(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

~~(vi)~~(v) the applicant is not under 19 years of age; ~~and~~

(b) ~~in the case of a corporate~~ *if the applicant is a publicly traded corporation:*

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);~~

~~(ii)~~(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a); *If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).*

~~(iii)~~(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

~~(iv)~~(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection ~~(2)(b)(iv)~~ ~~(2)(b)(iii)~~ does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

~~(v)~~(iv) the corporation is authorized to do business in Montana; ~~and~~

~~(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and~~

(c) *if the applicant is a privately held corporation:*

*(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).*

(ii) *each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);*

(iii) *each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.*

(iv) *the corporation is authorized to do business in Montana;*

~~(e) in the case of any other business entity as applicant:~~

~~(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).~~

*(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);*

*(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (2)(a).*

*(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (2)(a).*

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

~~(a) in the case of if the applicant is an individual applicant:~~

~~(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;~~

~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;~~

~~(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;~~

~~(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;~~

~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and~~

~~(vi) the applicant is not under 19 years of age; and~~

~~(b) in the case of a corporate if the applicant is a publicly traded corporation:~~

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);~~

~~(ii)(i)~~ each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). *If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).*; ~~and~~

~~(iii)(ii)~~ the corporation is authorized to do business in Montana; ~~and~~

(c) *if the applicant is a privately held corporation:*

(i) *each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).*

(ii) *the corporation is authorized to do business in Montana;*

~~(e) in the case of any other business entity as applicant:~~

~~(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b)~~

~~(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);~~

~~(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (3)(a).~~

~~(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (3)(a).~~

(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) ~~in the case of~~ *if the applicant is* an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, *the applicant's* rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and



(vi) an applicant for a wholesale license is ~~neither~~ *not* a manufacturer of an alcoholic beverage ~~nor is or owned or controlled by a manufacturer of an alcoholic beverage; and~~

(b) ~~in the case of a corporate~~ *if the applicant is a publicly traded corporation:*

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);~~

~~(ii)(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a);~~

~~(iii)(ii) an applicant for a wholesale license is neither not a manufacturer of an alcoholic beverage nor is or owned or controlled by a manufacturer of an alcoholic beverage; and~~

~~(iv)(iii) the corporation is authorized to do business in Montana; and~~

~~(c) if the applicant is a privately held corporation:~~

~~(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).~~

~~(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and~~

~~(iii) the corporation is authorized to do business in Montana;~~

~~(e) in the case of any other business entity as applicant:~~

~~(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b)~~

~~(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);~~

~~(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (4)(a).~~

~~(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (4)(a).~~

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

*(7) an applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:*

*(a) is a person whose prior financial or other activities or criminal record:*

*(i) poses a threat to the public interest of the state;*

*(ii) poses a threat to the effective regulation and control of alcoholic beverages; or*

*(iii) create a danger of illegal practices, methods, or activities in the conduct of the licensed business; or*

*(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense."*

Approved April 17, 2007

## CHAPTER NO. 198

[HB 287]

AN ACT OPPOSING THE IMPLEMENTATION OF THE FEDERAL REAL ID ACT AND DIRECTING THE MONTANA DEPARTMENT OF JUSTICE NOT TO IMPLEMENT THE PROVISIONS OF THE FEDERAL ACT.

WHEREAS, in May 2005, the U.S. Congress enacted the REAL ID Act of 2005 (REAL ID Act) as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (Public Law 109-13), which was signed by President Bush on May 11, 2005, and which becomes fully effective May 11, 2008; and

WHEREAS, some of the requirements of the REAL ID Act are that states shall:

(1) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

(2) verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;

(3) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card;

(4) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards; and

(5) issue a driver's license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

WHEREAS, use of the federal minimum standards for state driver's licenses and state-issued identification cards will be necessary for any type of federally regulated activity for which an identification card must be displayed, including flying in a commercial airplane, making transactions with a federally licensed bank, entering a federal building, or making application for federally supported public assistance benefits, including Social Security; and

WHEREAS, some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold, or otherwise used for purposes that were never intended or that are criminally related than if the REAL ID Act had not been enacted; and

WHEREAS, these potential breaches in privacy that could result directly from compliance with the REAL ID Act may violate the right to privacy, as secured by Article II, section 10, of the Montana Constitution, of thousands of residents of Montana; and

WHEREAS, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures have estimated, in an impact analysis dated September 2006, that the cost to the states to implement the REAL ID Act will be more than \$11 billion over 5 years, and the Motor Vehicle Division of the Montana Department of Justice has estimated that the implementation of the REAL ID Act will cost Montana \$2,660,000 to fully implement the Act, none of which costs are or will be paid for by the federal government; and

WHEREAS, for all of these reasons, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures, in a letter dated March 17, 2005, to the majority and minority leaders of the U.S. Senate, opposed the adoption of the REAL ID Act, but the opposition of those groups, and the groups' request that Congress rely on driver's license security provisions already passed by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, was largely ignored by Congress; and

WHEREAS, the regulations that are to be adopted by the U.S. Department of Homeland Security to implement the requirements of the REAL ID Act have yet to be adopted and, in reality, will probably not become effective until the spring of 2007, effectively giving the states only 1 year in which to become familiar with the implementing regulations and comply with those regulations and the requirements of the REAL ID Act; and

WHEREAS, the mandate to the states, through federal legislation that provides no funding for its requirements, to issue what is, in effect, a national identification card appears to be an attempt to "commandeer" the political machinery of the states and to require them to be agents of the federal government, in violation of the principles of federalism contained in the 10th amendment to the U.S. Constitution, as construed by the United States Supreme Court in *New York v. United States*, 488 U.S. 1041 (1992), *United States v. Lopez*, 514 U.S. 549 (1995), and *Printz v. United States*, 521 U.S. 898 (1997); and

WHEREAS, some states, or legislative bodies in some states, such as New Hampshire and Washington, have, through legislation, opposed the implementation of the REAL ID Act.

THEREFORE, the purpose of the Legislature in enacting [this act] is to refuse to implement the REAL ID Act and thereby protest the treatment by Congress and the President of the states as agents of the federal government and, by that protest, lead other state legislatures and Governors to reject the

treatment by the federal government of the 50 states by the enactment of the REAL ID Act.

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

**Section 1. Legislative finding and direction to state agency not to implement REAL ID Act.** (1) The legislature finds that the enactment into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution.

(2) The state of Montana will not participate in the implementation of the REAL ID Act of 2005. The department, including the motor vehicle division of the department, is directed not to implement the provisions of the REAL ID Act of 2005 and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department.

**Section 2. 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].

Approved April 17, 2007

## CHAPTER NO. 199

[HB 348]

AN ACT INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND INCREASING THE PROPORTIONAL AMOUNTS OF THE FEE THAT ARE USED FOR CERTAIN SNOWMOBILE TRAIL GROOMING AND ENFORCEMENT COSTS; AMENDING SECTION 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 23-2-615, MCA, is amended to read:

**“23-2-615. Nonresident temporary-use permits — use of fees.** (1) The requirements for a nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

- (i) the applicant’s name and permanent address; and
- (ii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~\$15~~ \$25, of which 50 cents is a search and rescue surcharge, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be permanently affixed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid during the fiscal year in which it is issued.

(3) The permit is not proof of ownership, and a certificate of title may not be issued.

(4) (a) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(b) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that will be used only on trails that are managed jointly by agreement between Montana and another state.

(5) Except as provided in subsection (1)(b), money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(a) ~~\$8~~ *\$11* must be expended in areas that are impacted by nonresident snowmobile use to assist in offsetting snowmobile trail grooming costs;

(b) ~~\$1.50~~ *\$2.50* must be used by the department for the enforcement of snowmobile laws pursuant to 23-2-641;

(c) ~~50-cents~~ *\$1* must be remitted to the license agent who sold the nonresident temporary-snowmobile-use permit; and

(d) ~~\$4.50~~ *\$10* must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100."

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved April 17, 2007

## CHAPTER NO. 200

[HB 372]

AN ACT ALLOWING A COUNTY TREASURER TO RECEIVE UP TO \$2,000 A YEAR IN ADDITION TO BASE SALARY; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 7-4-2503, MCA, is amended to read:

**"7-4-2503. Salary schedule for certain county officers — county compensation board.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) ~~The~~ *Except as provided in subsection (2), the* annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may,

at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

*(e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.*

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is \$50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer

members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved April 17, 2007

## CHAPTER NO. 201

[HB 587]

AN ACT CLARIFYING THAT COVERAGES SPECIFIED UNDER ONE POLICY OR UNDER MORE THAN ONE POLICY ISSUED BY THE SAME COMPANY MAY NOT BE ADDED TOGETHER IF THE PREMIUMS CHARGED FOR THE COVERAGE ACTUARIALLY REFLECT THE LIMITING OF COVERAGE SEPARATELY TO THE VEHICLES COVERED BY THE POLICY; AMENDING SECTION 33-23-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 33-23-203, MCA, is amended to read:

**"33-23-203. Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under each part of the policy must be determined as follows, regardless of the number of motor vehicles insured under the policy, the number of policies issued by the same company covering the insured, or the number of separate premiums paid:

(a) the limits of insurance coverages available for any one accident are the limits specified for each coverage available under the policy insuring the motor vehicle involved in the accident;

(b) if the motor vehicle involved in the accident is not insured under a policy, the limits of the insurance coverages available for any one accident are the highest limits of the coverages specified under one policy for one motor vehicle insured under that policy; and

(c) the limits of the coverages specified under one policy or under more than one policy issued by the same company may not be added together to determine the limits of insurance coverages available under the policy or policies for any one accident *if the premiums charged for the coverage by the insurer actuarially reflect the limiting of coverage separately to the vehicles covered by the policy and the premium rates have been filed with the commissioner.*

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, reductions of coverage, or subrogation clauses that are designed to prevent duplicate payments for the same element of loss under the motor vehicle liability policy or under another casualty policy that provides coverage for an injury that necessitates damages or benefit payments or to prevent the adding together of insurance coverage limits in one policy or from more than one policy issued by the same company.

(3) An insurer that charges a premium for a specified coverage shall clearly inform or notify the insured in writing of the limits of the coverage with respect to the premium charged and whether the coverage from one policy or motor vehicle may be added to the coverage of another policy or motor vehicle.

~~(4)~~ ~~Nothing in this~~ This section is *not* intended to create coverage for a motor vehicle that would otherwise be uninsured.”

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

**Section 3. Applicability.** [This act] applies to motor insurance policies issued or renewed on or after [the effective date of this act].

Approved April 17, 2007

## CHAPTER NO. 202

[HB 617]

AN ACT REVISING THE FILING REQUIREMENTS FOR CHILD SUPPORT DEBTS; REQUIRING THAT NOTICE OF A SUPPORT DEBT BE FILED WITH THE CLERK OF THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE MOST RECENT SUPPORT ORDER WAS ISSUED; REQUIRING THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT WITH THE CLERK OF THE DISTRICT COURT; REQUIRING THE COMMENCEMENT OF CONTEMPT OF COURT PROCEEDINGS UPON THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 40-5-222 AND 40-5-227, MCA.

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

**Section 1.** Section 40-5-222, MCA, is amended to read:

**“40-5-222. Support debt based upon support order — notice — contents — action to collect.** (1) The department may issue a notice of a support debt accrued or accruing based upon a support order. The notice may be served upon the obligor, in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt ~~shall~~ *must* include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any support order;



- (b) a statement that the property of the debtor is subject to collection action;
- (c) a statement that the property is subject to distraint and seizure and sale;
- (d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and
- (e) a statement that the obligor is entitled to a fair hearing.

(3) Action to collect the support debt by distraint and seizure and sale is lawful after 20 days from the date of service upon the obligor or 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the obligor may request a fair hearing as provided in 40-5-226.

(5) *The department shall send a copy of the notice described in subsection (2) to the clerk of the district court for the judicial district in which the most recent support order was issued.*

**Section 2.** Section 40-5-227, MCA, is amended to read:

**“40-5-227. Filing and docketing of final orders — orders effective as district court decrees.** (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana *and must be filed in the office of the clerk of the district court that received notice under 40-5-222(5).* ~~Upon the request of the department, the~~ *The* order must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings. A final administrative order of the department is effective and enforceable without filing and docketing the order in the district court. Contempt of court proceedings and writs of execution based on the administrative order may not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order may not operate as a judgment lien; unless the order is first docketed with the district court or a lien is otherwise perfected under the laws of this state, including 40-5-248.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-247.

(4) *If the department has filed an abstract pursuant to subsection (1) after issuing a notice of a support debt pursuant to 40-5-222, the department shall petition the district court to find the obligor in contempt if the obligor has not made a payment on the debt in 30 days.”*

Approved April 17, 2007

## CHAPTER NO. 203

[HB 629]

### AN ACT PROVIDING FOR MEDIATION OF CRIMINAL PROCEEDINGS.

WHEREAS, the Montana Legislature recognizes the increasing burden on all levels of courts in the State of Montana; and

WHEREAS, mediation and other methods of alternative dispute resolution have proved effective in lessening the burden in other areas of the legal system; and

WHEREAS, many crimes are more amenable to mediation than to criminal prosecution; and

WHEREAS, it is the intent of the Montana Legislature to allow judges of the District, Justices', City, and Municipal Courts to suggest, and the parties to request by motion, mediation for certain criminal proceedings.

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

**Section 1. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Mediation" has the meaning provided in 26-1-813(1).

(2) "Party" means any one of the following, and "parties" means all of the following:

- (a) the defendant;
- (b) a victim of the crime; or
- (c) the county attorney or other prosecuting attorney.

**Section 2. Mediation.** (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion, or upon motion of a party, and with the consent of all the parties refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

- (a) deliberate homicide, as described in 45-5-102;
- (b) mitigated deliberate homicide, as described in 45-5-103;
- (c) intimidation, as described in 45-5-203;
- (d) partner or family member assault, as described in 45-5-206;
- (e) assault on a minor, as described in 45-5-212;
- (f) stalking, as described in 45-5-220;
- (g) aggravated kidnapping, as described in 45-5-303;
- (h) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, 45-5-505, or 45-5-507;
- (i) endangering the welfare of children, as described in 45-5-622;
- (j) sexual abuse of children, as described in 45-5-625; or
- (k) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations.

**Section 3. Factors to use in determining appropriateness of mediation.** In deciding whether mediation is appropriate, the court may consider:

- (1) the nature of the offense;
- (2) any special circumstances or characteristics of the defendant or any victim;
- (3) whether the defendant previously participated in mediation in the current or a prior proceeding;
- (4) whether it is probable that the defendant will cooperate with the mediator;
- (5) the recommendation of any victim or victims;
- (6) the recommendation of any involved law enforcement agency;
- (7) whether a qualified mediator is available;
- (8) the type of sentence, including any treatment, that the defendant would most likely be amenable to, whether the best interests of the defendant and the security of the public may require that the defendant be placed in secure detention or under supervision, and whether there are facilities available for treatment and rehabilitation of the defendant;
- (9) whether there is evidence that the charged offense included violence or was otherwise committed in an aggressive and premeditated manner;
- (10) the motivation for the commission of the charged offense;
- (11) the age of the defendant and of any codefendant or victim;
- (12) the previous history of the defendant, including any criminal history and any other prior antisocial behavior or pattern of physical violence;
- (13) the sophistication and maturity of the defendant as determined by factors such as home, employment, school activities, emotional attitude, and pattern of living;
- (14) whether any victim wishes to address the parties and mediator during mediation; and
- (15) other matters that the court believes relevant.

**Section 4. Procedure following mediation.** (1) If mediation is successful, the mediator shall inform the court of the results of the mediation and of any agreement reached.

(2) If mediation is unsuccessful or if one of the parties withdraws from the mediation, the mediator shall notify the court and the prosecutor may proceed with the prosecution of the defendant.

(3) After a successful mediation, the results of the mediation and any agreement reached by the parties to the mediation are subject to the approval of the court.

**Section 5. Privilege and confidentiality.** Mediation communications and documents are privileged and confidential and may not be disclosed in any judicial or administrative proceeding except when:

- (1) the parties to the mediation agree, in writing, to disclosure;
- (2) a written agreement by the parties to mediate permits disclosure;
- (3) a communication or document provides evidence of an ongoing or future criminal activity;
- (4) disclosure is necessary to prevent an action or event that is reasonably likely to result in death, serious bodily harm, or substantial injury to the financial interests or property of another;
- (5) a communication or document is necessary to defend against a legal malpractice claim by the defendant against the defendant's attorney; or
- (6) a communication or document is relevant to determining the existence of an agreement that resulted from the mediation or to the enforcement of an agreement.

**Section 6. Right to speedy trial.** Time spent in mediation may not be counted in determining whether a defendant's right to a speedy trial has been violated.

**Section 7. Costs.** The mediation costs must be paid equally by the defendant and the prosecution, except that if a defendant is eligible for a public defender, the public defender shall pay the mediation costs.

**Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46 apply to [sections 1 through 7].

Approved April 17, 2007

## CHAPTER NO. 204

[HB 657]

AN ACT REVISING CONSTRUCTION LIEN LAW TO ALLOW THE CONTRACTING OWNER TO FILE A BOND WITHIN 30 DAYS OF AN ACTION BROUGHT TO FORECLOSE UPON A CONSTRUCTION LIEN; AND AMENDING SECTIONS 71-3-551 AND 71-3-553, MCA.

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

**Section 1.** Section 71-3-551, MCA, is amended to read:

**“71-3-551. Substitution of bond allowed — filing — amount — condition.** (1) Whenever a construction lien has been filed upon real property or any improvements ~~thereon~~ *on the real property*, the contracting owner of any interest in ~~such~~ *the* property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose ~~such~~ *the construction lien*; or *within 30 days of the service of a complaint in an action to foreclose the construction lien*, file a bond with the clerk of the district court in the county in which ~~such~~ *the* property is ~~situated~~ *located* or, if ~~such~~ *the* property is ~~situated~~ *located* in more than one county, with the clerk of the district court of any county in which a part of ~~such~~ *the* property is ~~situated~~ *located*.

(2) ~~Such~~ *The* bond ~~shall~~ *must* be in an amount 1 1/2 times the amount of the *construction* lien and ~~shall~~ *must* be either in cash or written by a corporate surety company. If written by a corporate surety, ~~such~~ *the* bond ~~shall~~ *must* be approved by a judge of the district court with which ~~such~~ *the* bond is filed.

(3) The bond ~~shall~~ *must* be conditioned that if the *construction* lien claimant ~~shall be~~ *is* finally adjudged to be entitled to recover upon the claim upon which ~~his the construction~~ lien is based, the principal or ~~his the principal's~~ sureties shall pay to ~~such the~~ claimant the amount of ~~his the claimant's~~ judgment, together with any interest, costs, ~~attorneys' attorney~~ fees, and other sums ~~which such that the~~ claimant would be entitled to recover upon the foreclosure of a *construction* lien against the principal.”

**Section 2.** Section 71-3-553, MCA, is amended to read:

**“71-3-553. Action upon bond — period of limitation same.** (1) When a bond is filed *prior to the service of a complaint in an action to foreclose upon a construction lien* as ~~provided~~ *allowed* in 71-3-551, the person filing ~~such the~~ *construction* lien may bring an action upon the bond.

(2) ~~Such The~~ *The* action ~~shall~~ *must* be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure ~~shall apply~~ *applies* to an action upon ~~such the~~ bond as it would had ~~no~~ *a* bond *not* been filed.”

Approved April 17, 2007

## CHAPTER NO. 205

[HB 782]

AN ACT PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM REQUIRING REPAYMENT FROM FOOD STAMP RECIPIENTS FOR DEPARTMENT ERRORS; ESTABLISHING THE DEPARTMENT'S RESPONSIBILITY FOR REPAYING A FEDERAL CLAIM FOR OVERPAYMENT OF FOOD STAMPS IN CERTAIN CASES; AMENDING SECTIONS 39-51-2208 AND 53-2-108, 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 39-51-2208, MCA, is amended to read:

**“39-51-2208. Deduction and withholding of unemployment benefits to repay overissuance of food stamps — definitions.** (1) For the purposes of this section, the following definitions apply:

(a) “State food stamp agency” means any agency of a state or a political subdivision of a state that is responsible for enforcing the repayment of an obligation for overissuance of food stamp ~~coupons~~ *benefits*.

(b) “Unemployment benefits” means benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law that provides for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the claim whether or not the individual owes for an uncollected overissuance of food stamp ~~coupons~~ *benefits* as defined in section 13(c)(1) of the Food Stamp Act of 1977, (7 U.S.C. 2022(c)(1)). If an individual discloses that the individual has an uncollected obligation for overissuance of food stamp ~~coupons~~ *benefits* and if the department finds that the individual is

eligible for unemployment benefits, the department shall notify the state food stamp agency that the individual is eligible for unemployment benefits.

(3) ~~The~~ *Except as provided in subsection (7), the* department shall deduct and withhold from any unemployment benefits payable to an individual who has an obligation for an uncollected overissuance of food stamp ~~coupons~~ *benefits*:

(a) the amount specified by the individual to the department to be deducted and withheld, in which case subsections (3)(b) and (3)(c) are not applicable;

(b) the amount, if any, determined by a state food stamp agency for enforcing obligations for overissuance of food stamp ~~coupons~~ *benefits*, pursuant to an agreement submitted to the department under section 13(c)(3)(A) of the Food Stamp Act of 1977, (7 U.S.C. 2022(c)(3)(A)), unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977, (7 U.S.C. 2022 (c)(3)(B)).

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp ~~coupons~~ *benefits*.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the state food stamp agency in satisfaction of the individual's uncollected overissuance of food stamp ~~coupons~~ *benefits*.

(7) *The department may not deduct or withhold unemployment benefits in a case involving overissuance of food stamps that meets the provisions of 53-2-108(2)."*

**Section 2.** Section 53-2-108, MCA, is amended to read:

**"53-2-108. Overpayment of assistance — department errors involving food stamps — civil penalty when fraud.** (1) ~~due to~~ *because of* department or recipient error, a recipient receives public assistance for which the recipient is not eligible, the portion of payment that the recipient is not entitled to receive may be returned at the discretion of the department.

(2) (a) *Except as provided in subsection (3), a recipient who receives an overpayment of food stamp benefits because of a department error in processing or administering the recipient's case is not required to repay the department for the overpayment if:*

(i) *the recipient notifies the department of the potential error; and*

(ii) *the department informs the recipient that no error occurred or fails to respond to the notification within 30 days.*

(b) *If a federal agency seeks repayment of an overpayment of food stamps in a case meeting the provisions of subsection (2)(a):*

(i) *the department is considered a person connected to the household for purposes of 7 CFR 273.18 and is liable for reimbursing the federal claim for the overpayment; and*

(ii) *the recipient is exempt from the unemployment withholding requirements of 39-51-2208.*

(2)(3) If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled must be repaid and, until fully paid, is a debt due the state.”

**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 any cases pending before a Montana court on [the effective date of this act].

Approved April 17, 2007

## CHAPTER NO. 206

[SB 36]

AN ACT REVISING AND CLARIFYING THE PAYMENT OF MOTOR VEHICLE REGISTRATION FEES; AMENDING SECTION 61-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** 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 (18) (19):

(2) (a) ~~Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.~~

(b) ~~The following vehicles are exempt from the registration fee imposed in this subsection (2):~~

(i) ~~light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(e), (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;~~

(ii) ~~a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;~~

(iii) ~~a light vehicle registered under 61-3-456.~~

(c) ~~The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.~~

(d) ~~The 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:~~

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

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

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

(e) ~~The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.~~

(3) ~~(a) Except as provided in subsection (3)(e) (14), the owner one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of \$61.25 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.~~

(b) ~~The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of \$148.25.~~

(c) ~~Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.~~

(4) ~~The annual~~ *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, that are for motor vehicles 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) ~~(a) The~~ *Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.*

(b) ~~The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:~~

(i) ~~the name and home mailing address of the owner;~~

(ii) ~~the certificate of title number;~~

(iii) ~~the name of the manufacturer of the off-highway vehicle;~~

(iv) ~~the model number or name;~~

(v) ~~the year of manufacture;~~

(vi) ~~a statement evidencing payment of the fee in lieu of property tax; and~~

(vii) ~~other information that the department may require.~~

(c) ~~If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.~~



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

(7) (a) ~~The owner of a motor home shall pay an annual registration fee for a motor home, based on the age of the motor home, according to the following schedule 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) (i) ~~Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

(ii) ~~If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

(e) ~~(i) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under subsection (7)(a) this section may permanently register the motor home upon payment of:~~

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

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

(ii) ~~The following series of license plates may not be used for purposes of permanent registration of a motor home:~~

~~(A) Montana national guard license plates issued under 61-3-458(2)(b);~~

~~(B) reserve armed forces license plates issued under 61-3-458(2)(e);~~

~~(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);~~

~~(D) amateur radio operator license plates issued under 61-3-422;~~

~~(E) collegiate license plates issued under 61-3-465; and~~

~~(F) generic specialty license plates issued under 61-3-479.~~

(iii) ~~Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.~~

(8) (a) ~~The 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 \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, 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.~~

(c) ~~The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.~~

(9) ~~(a) The~~ *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, is \$72; and~~

~~(b) the registration fee for travel trailers 16 feet in length or longer, is \$152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.~~

~~(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.~~

~~(10) (a) The owner of each~~ *Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee required to be numbered under 23-2-512 is as follows:*

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

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

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

~~(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.~~

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

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

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

~~(ii)(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 fee in lieu of tax imposed in subsection (11)(a).~~

~~(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.~~

~~(12) A fee of \$5 must be collected when a new set of standard license plates or a new single standard license plate provided for under 61-3-332 is issued. The \$5 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.~~

~~(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) When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

- (a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;
- (b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:
  - (i) if the vehicle is 4 years old or less, \$195.75;
  - (ii) if the vehicle is 5 years old through 10 years old, \$65.75; and
  - (iii) if the vehicle is 11 years old or older, \$6.75;
- (c) motor homes:
  - (i) less than 2 years old, \$250.50;
  - (ii) 2 years old and less than 5 years old, \$192.25;
  - (iii) 5 years old and less than 8 years old, \$100.50; and
  - (iv) 8 years old and older, \$65.50;
- (d) motorcycles and quadricycles registered for use on the public highways, \$42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, \$103.25. This fee is a one-time fee, except upon transfer of ownership.
- (e) travel trailers under 16 feet in length, \$50.50, and travel trailers 16 feet in length or longer, \$130.50. This fee is a one-time fee, except upon transfer of ownership.
- (f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, \$52. This fee is a one-time fee, except upon transfer of ownership.
- (g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, \$139. This fee is a one-time fee, except upon transfer of ownership. *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 for licensing pursuant to *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 2. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 2007

## CHAPTER NO. 207

[SB 47]

AN ACT AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY THE EXISTING STATUTE REQUIRING AN AGENCY TO NOTIFY A BILL'S SPONSOR AT THE TIME THAT THE AGENCY BEGINS TO WRITE RULES IMPLEMENTING THE BILL AFTER IT IS ENACTED; AND AMENDING SECTION 2-4-302, MCA.

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

**Section 1.** Section 2-4-302, MCA, is amended to read:

**“2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the *primary* sponsor of the legislative bill that enacted the ~~section~~ *statute or amendment to the statute* that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have

made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement ~~one or more statutes~~ *a statute or an amendment to a statute*, notify the *primary* sponsor of the legislative bill that enacted the ~~section~~ *statute or amendment to a statute*. *If an agency intends to implement a statute or amendment to a statute by proposing initial rules for more than one program, the agency shall notify the primary sponsor, as required in this subsection (2)(d), for the purpose of the administrative rules that will implement each of the programs.*

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the “Notice of Function of Administrative Rule Review Committee” appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying *primary* sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator’s name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice.”

Approved April 17, 2007

## CHAPTER NO. 208

[SB 150]

AN ACT CLARIFYING THAT A FUND OF A TAX-EXEMPT ORGANIZATION FROM WHICH CONTRIBUTIONS ARE EXPENDED DIRECTLY FOR CONSTRUCTING, RENOVATING, OR PURCHASING OPERATIONAL ASSETS IS NOT A PERMANENT, IRREVOCABLE FUND FOR THE PURPOSES OF DETERMINING THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX CREDIT; AMENDING SECTION 15-30-165, MCA, SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001, AND SECTION 7, CHAPTER 4, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

**Section 1.** Section 15-30-165, MCA, is amended to read:

**“15-30-165. (Temporary) Qualified endowments credit — definitions — rules.** (1) For the purposes of 15-30-166 *and this section*, the following definitions apply:

~~(1)(a)~~ (i) *“Permanent, irrevocable fund” means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, that may either be added to principal or expended.*

(ii) *The term does not include a fund held by or for a tax-exempt organization to accomplish a charitable, religious, educational, or eleemosynary purpose from which contributions are expended directly for constructing, renovating, or purchasing operational assets, such as buildings or equipment.*

(b) Subject to subsection ~~(3)~~ (2), “planned gift” means an irrevocable contribution to a permanent endowment held by *or for* a tax-exempt organization, ~~or for a tax-exempt organization~~, when the contribution uses any

of the following techniques that are authorized under the Internal Revenue Code:

- (~~a~~)(i) charitable remainder unitrusts, as defined by 26 U.S.C. 664;
- (~~b~~)(ii) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
- (~~c~~)(iii) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
- (~~d~~)(iv) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (~~e~~)(v) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (~~f~~)(vi) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (~~g~~)(vii) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (~~h~~)(viii) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);
- (~~i~~)(ix) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(~~2~~)(c) “Qualified endowment” means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

- (~~a~~)(i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or
- (~~b~~)(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(~~3~~)(2) (a) A contribution using a technique described in subsection (~~1~~)(~~a~~) (~~1~~)(b)(i) or (~~1~~)(~~b~~) (~~1~~)(b)(ii) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries’ interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

- (i) the date of death of the beneficiaries; or
- (ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (~~1~~)(~~g~~) (~~1~~)(b)(vii) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (~~1~~)(~~f~~) (~~1~~)(b)(vi) or (~~1~~)(~~g~~) (~~1~~)(b)(vii) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

- (i) the date of death of the annuitant or annuitants; or
- (ii) 5 years after the date of the contribution.

(d) A contribution using a technique described in subsection (~~1~~)(~~f~~) (~~1~~)(b)(vi) or (~~1~~)(~~g~~) (~~1~~)(b)(vii) is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(~~4~~)(3) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Terminates December 31, 2007 2013 —sec. 5, Ch. 226, L. 2001.)”

**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ 2013.”

**Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

“**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ 2007 2013.”

**Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

“**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ 2013.”

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

**Section 6. Applicability.** [This act] applies to charitable contributions made on or after [the effective date of this act].

**Section 7. Termination.** (1) [Section 1] terminates December 31, 2013.

(2) Sections 1 through 4, Chapter 226, Laws of 2001, terminate December 31, 2013.

(3) Section 7, Chapter 482, Laws of 2003, terminates December 31, 2013.

Approved April 17, 2007

## CHAPTER NO. 209

[SB 160]

AN ACT ALLOWING LOCAL GOVERNMENTS, TRANSPORTATION DISTRICTS, AND NONPROFIT ORGANIZATIONS TO USE MONEY FROM THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT AS MATCHING FUNDS FOR FEDERAL GRANTS; AND AMENDING SECTION 7-14-112, MCA.

WHEREAS, Montana’s senior citizens and persons with disabilities rely on human service agencies and public transportation systems for essential transportation to work, health care services, and recreation; and

WHEREAS, these transportation services and systems can be expanded by using state funding, known as Transportation Assistance for the Disabled and Elderly or TransADE, to match increases in federal transit funding; and

WHEREAS, this expansion of service addresses coordinated transportation options available to Montana’s transit-dependent residents.

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

**Section 1.** Section 7-14-112, MCA, is amended to read:

“**7-14-112. Senior citizen and persons with disabilities transportation services account — use.** (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to 15-1-122(3)(e).

(2) Except as provided in subsection (6), the account must be used to provide operating funds *or matching funds for operating grants pursuant to 49 U.S.C. 5311* to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.



(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any ~~amount of~~ money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs *or matching funds for operating grants* for the purposes described in 49 U.S.C. 5311 other than for

transportation services for persons 60 years of age or older or persons with disabilities.”

Approved April 17, 2007

## CHAPTER NO. 210

[SB 169]

AN ACT ADJUSTING THE REDUCTION IN THE BASE ENTITLEMENT SHARE, FOR FUNDING RESPONSIBILITIES FOR PUBLIC DEFENDER SERVICES, FOR CASCADE COUNTY, FLATHEAD COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, AND YELLOWSTONE COUNTY; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature established the statewide Montana public defender system by the passage of Senate Bill No. 146, Chapter 449, Laws of 2005; and

WHEREAS, the Legislature provided that funding responsibilities for public defender services through the statewide system will be shared by state and local government and that the counties', consolidated governments', and cities' share of costs will be paid through a reduction in the county's, consolidated government's, or city's base entitlement share under section 15-1-121, MCA; and

WHEREAS, the Legislature provided for an audit of the actual costs for public defender services in District Court and Justice's Court proceedings incurred from July 1, 1998, through June 30, 2004, in Cascade County, Flathead County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County and required that the audit results be reported to the Governor's budget office, the Legislative Audit Committee, the Legislative Finance Committee, and the Law and Justice Interim Committee; and

WHEREAS, the Legislature directed the Law and Justice Interim Committee to prepare legislation to be introduced in the 2007 legislative session to amend section 15-1-121, MCA, to provide that the base entitlement share for Cascade County, Flathead County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County be adjusted by an appropriate amount arrived at based on the audit and in consultation with the Legislative Audit Committee, the Legislative Finance Committee, representatives of the counties, the Governor's budget office, the American Civil Liberties Union, the Attorney General's office, and all other interested and participating parties; and

WHEREAS, the audit was performed and reported as required; and

WHEREAS, the Law and Justice Interim Committee, in consultation with interested parties, has determined the appropriate amounts to be used to adjust the base entitlement share for each of the named counties; and

WHEREAS, the Law and Justice Interim Committee recommends the adjustments to the base entitlement share for each of the named counties as proposed in this act.

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

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

**“15-1-121. Entitlement share payment — appropriation.** (1) The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506; and

(v) 27-9-103;

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

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

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

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

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

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

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

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

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

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

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

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2007 to determine the fiscal year 2007 entitlement share payments, the department shall subtract from the fiscal year 2006 entitlement share payments the following amounts:

Beaverhead		\$6,972
Big Horn		\$52,551
Blaine		\$13,625
Broadwater		\$2,564
Carbon		\$11,537
Carter		\$407
Cascade	<del>\$157,151</del>	\$100,000
Chouteau		\$3,536
Custer		\$7,011
Daniels		\$143
Dawson		\$3,893
Fallon		\$1,803
Fergus		\$9,324
Flathead	<del>\$33,655</del>	\$100,000
Gallatin	<del>\$222,029</del>	\$160,000
Garfield		\$91
Glacier		\$3,035
Golden Valley		\$2,282
Granite		\$4,554
Hill		\$31,740

943	MONTANA SESSION LAWS 2007	Ch. 210
Jefferson		\$5,700
Judith Basin		\$1,487
Lake		\$38,314
Lewis and Clark	\$247,886	\$160,000
Liberty		\$152
Lincoln		\$3,759
Madison		\$8,805
McCone		\$1,651
Meagher		\$2,722
Mineral		\$2,361
Missoula	\$172,600	\$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	\$266,644	\$270,000
Anaconda-Deer Lodge		\$20,707
Butte-Silver Bow		\$53,057
Alberton		\$675
Bainville		\$258
Baker		\$2,828

Ch. 210	MONTANA SESSION LAWS 2007	944
Bearcreek		\$143
Belgrade		\$11,704
Belt		\$1,056
Big Sandy		\$1,130
Big Timber		\$2,910
Billings		\$163,499
Boulder		\$2,340
Bozeman		\$52,805
Bridger		\$1,303
Broadus		\$766
Broadview		\$258
Brockton		\$414
Browning		\$1,830
Cascade		\$1,374
Chester		\$1,430
Chinook		\$2,275
Choteau		\$3,050
Circle		\$1,018
Clyde Park		\$572
Colstrip		\$4,090
Columbia Falls		\$6,805
Columbus		\$3,245
Conrad		\$4,562
Culbertson		\$1,216
Cut Bank		\$5,316
Darby		\$1,348
Deer Lodge		\$5,708
Denton		\$503
Dillon		\$6,928
Dodson		\$194
Drummond		\$561
Dutton		\$661
East Helena		\$2,888
Ekalaka		\$689
Ennis		\$1,518
Eureka		\$1,733
Fairfield		\$1,120
Fairview		\$1,152
Flaxville		\$143

Forsyth	\$3,286
Fort Benton	\$2,579
Fort Peck	\$393
Froid	\$328
Fromberg	\$855
Geraldine	\$457
Glasgow	\$5,361
Glendive	\$8,099
Grass Range	\$254
Great Falls	\$96,422
Hamilton	\$7,148
Hardin	\$5,920
Harlem	\$1,422
Harlowton	\$1,678
Havre	\$16,223
Helena	\$45,877
Hingham	\$263
Hobson	\$397
Hot Springs	\$912
Hysham	\$482
Ismay	\$43
Joliet	\$1,006
Jordan	\$606
Judith Gap	\$263
Kalispell	\$28,144
Kevin	\$304
Laurel	\$10,804
Lavina	\$361
Lewistown	\$10,170
Libby	\$4,475
Lima	\$397
Livingston	\$12,145
Lodge Grass	\$889
Malta	\$3,389
Manhattan	\$2,485
Medicine Lake	\$410
Melstone	\$234
Miles City	\$14,152
Missoula	\$104,264

Ch. 210	MONTANA SESSION LAWS 2007	946
Moore		\$319
Nashua		\$536
Neihart		\$149
Opheim		\$180
Outlook		\$125
Philipsburg		\$1,612
Pinesdale		\$1,413
Plains		\$2,007
Plentywood		\$3,185
Plevna		\$225
Polson		\$7,722
Poplar		\$1,544
Red Lodge		\$3,903
Rexford		\$263
Richey		\$309
Ronan		\$3,262
Roundup		\$3,280
Ryegate		\$465
Saco		\$354
Scobey		\$1,798
Shelby		\$5,677
Sheridan		\$1,150
Sidney		\$7,747
Stanford		\$737
Stevensville		\$3,063
St. Ignatius		\$1,367
Sunburst		\$709
Superior		\$1,521
Terry		\$1,011
Thompson Falls		\$2,272
Three Forks		\$3,130
Townsend		\$3,286
Troy		\$1,654
Twin Bridges		\$695
Valier		\$817
Virginia City		\$223
Walkerville		\$1,183
West Yellowstone		\$2,083
Westby		\$263



White Sulphur Springs	\$1,734
Whitefish	\$9,932
Whitehall	\$1,889
Wibaux	\$893
Winifred	\$259
Winnett	\$314
Wolf Point	\$4,497

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) The entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

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

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1.”

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

**Section 3. Applicability.** [This act] applies to entitlement share payments under 15-1-121 made in fiscal year 2007 and subsequent fiscal years. The department of revenue shall adjust the fourth quarterly payments for fiscal year 2007 to reflect the base entitlement share for each county as adjusted in [this act].

Approved April 17, 2007

## CHAPTER NO. 211

[SB 177]

AN ACT EXTENDING THE TIME IN WHICH A PETITION MAY BE FILED WITH A DISTRICT COURT TO SET ASIDE AN AGENCY DECISION MADE IN VIOLATION OF THE PUBLIC PARTICIPATION IN GOVERNMENT STATUTES IN TITLE 2, CHAPTER 3, PART 1 OR 2, MCA; AND AMENDING SECTIONS 2-3-114 AND 2-3-213, MCA.

WHEREAS, sections 2-3-114 and 2-3-213, MCA, now require that civil actions brought under either of those sections in District Court to enforce the laws allowing citizen participation in government be brought within 30 days of an agency decision made in violation of those laws; and

WHEREAS, the effect of the 30-day limitation is to prohibit suits brought after that 30-day limit, as was confirmed by the Montana Supreme Court in the case of *Kadillak v. The Anaconda Co.*, 184 M 127 (1979), in which the Supreme Court held that a District Court had no jurisdiction to even consider a case brought after the 30-day period had passed; and

WHEREAS, if an agency, board, or other public entity holds a meeting but does not give notice of a meeting, does not publish an agenda for the meeting, and does not publish minutes of a meeting, there is no way for the public to know whether a meeting occurred, whether a decision was made by the agency, board, or other public entity that is of public interest, or whether the 30-day “clock” has in fact started, except by word of mouth; and

WHEREAS, if a potential plaintiff learns of the meeting by word of mouth at a time too late in the 30-day period to discuss the violation of the participation in government statutes with a potential defendant, it could force a hasty decision to bring suit against the agency, board, or other public entity just because the 30-day period has almost passed.

THEREFORE, it is the determination of the State Administration and Veterans’ Affairs Interim Committee that the starting of the 30-day “clock” at the time that a potential plaintiff or petitioner learns or should have learned of a decision made at a meeting held in violation of the law will still apply a limitation to the time that a suit may be brought, but is more fair to a plaintiff or petitioner who might otherwise be precluded from legal action, with the agency, board, or other public entity thereby being rewarded for its secrecy.

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

**Section 1.** Section 2-3-114, MCA, is amended to read:

**“2-3-114. Enforcement.** The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition ~~made within 30 days of the date of the decision~~ of any person whose rights have been prejudiced. *A petition pursuant to this section must be filed within 30 days of the date on which the petitioner learns, or reasonably should have learned, of the agency’s decision.”*

**Section 2.** Section 2-3-213, MCA, is amended to read:

**“2-3-213. Voidability.** Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void ~~any such a~~ decision must be commenced within 30 days of the ~~decision date on which the~~ *plaintiff or petitioner learns, or reasonably should have learned, of the agency’s decision.”*

Approved April 17, 2007

## CHAPTER NO. 212

[SB 193]

AN ACT REQUIRING A CHILD PROTECTIVE SOCIAL WORKER TO SUBMIT AN AFFIDAVIT TO THE COUNTY ATTORNEY WITHIN 2 WORKING DAYS OF A CHILD’S REMOVAL FROM A HOME; REQUIRING THE AFFIDAVIT TO BE PROVIDED TO THE PARENTS AT THE SAME TIME, IF POSSIBLE; INCREASING THE TIME TO FILE AN ABUSE AND NEGLECT PETITION FROM 2 DAYS TO 5 DAYS; AND AMENDING SECTION 41-3-301, MCA.

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

**Section 1.** Section 41-3-301, MCA, is amended to read:

**“41-3-301. Emergency protective service.** (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) *If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 2 5 working days, excluding weekends and holidays, of the emergency placement removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.*

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(7) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

(8) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Approved April 17, 2007

## CHAPTER NO. 213

[SB 248]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, FOREST SERVICE-MONTANA COMPACT; PROVIDING FOR A CHANGE IN APPROPRIATION RIGHT TO INSTREAM FLOW IN CERTAIN INSTANCES; PROVIDING ADDITIONAL CRITERIA

THAT MUST BE MET BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE TO BE ABLE TO CHANGE AN APPROPRIATION RIGHT TO INSTREAM FLOW; REQUIRING APPLICANTS TO SUBMIT PROOF OF ANY WRITTEN SPECIAL USE AUTHORIZATION REQUIRED BY FEDERAL LAW TO OCCUPY, USE, OR TRAVERSE NATIONAL FOREST SYSTEM LANDS FOR THE PURPOSE OF DIVERSION, IMPOUNDMENT, STORAGE, TRANSPORTATION, WITHDRAWAL, USE, OR DISTRIBUTION OF WATER IN CERTAIN INSTANCES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES NECESSARY FOR STATE WATER RESERVATIONS; PROVIDING FOR PROCESSING OF STATE WATER RESERVATIONS FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE IN ALL BASINS IN MONTANA; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, 85-2-308, 85-2-310, 85-2-311, 85-2-312, 85-2-316, 85-2-319, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-401, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. United States of America, department of agriculture, forest service-Montana compact ratified.** The compact entered into by the state of Montana and the United States of America, Department of Agriculture, Forest Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing], is ratified. The compact is as follows:

WATER RIGHTS COMPACT  
STATE OF MONTANA  
UNITED STATES OF AMERICA, DEPARTMENT  
OF AGRICULTURE, FOREST SERVICE

This Compact is entered into by the State of Montana ("State") and the United States of America ("United States") to settle for all time any and all claims existing on the Effective Date of This Compact to federal reserved water rights for National Forest System Lands administered by the Forest Service, an agency of the United States Department of Agriculture ("Forest Service"), within the State of Montana.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, section 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian federal reserved water rights within the State of Montana;

WHEREAS, section 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, the United States wishes to secure water rights to fulfill the purposes of National Forest System Lands in the State of Montana;

WHEREAS, the United States, in quantifying and securing water rights to meet National Forest System purposes, seeks cooperatively to accommodate the interests of the State and its citizens and to avoid the conflict and uncertainty inherent in litigating federal reserved water rights claims. The United States believes that the natural flows needed for favorable conditions of flow, for fisheries, and for other resource management goals and obligations on National Forest System Lands can be achieved, without materially affecting the interests of the United States, through the use of state law as provided in this Compact.

WHEREAS, the United States Attorney General or a duly designated official of the United States Department of Justice has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, The Secretary of Agriculture or a duly designated official of the United States Department of Agriculture has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

NOW THEREFORE, the State of Montana and the United States agree as follows:

## ARTICLE I DEFINITIONS

For purposes of this Compact only the following definitions shall apply:

(1) "Abstracts" means the documents included in Appendix 1 of this Compact, entitled "Abstracts of Forest Service Federal Reserved Water Rights for Current Discrete Administrative Uses", referenced in this Compact as Appendix 1.

(2) "Concurrently" for the purposes of instream uses means not cumulative to the flow of other instream, nondiversionary water rights on the same reach of stream and for the purposes of in situ uses means not cumulative to the volume or flow of other in situ, nondiversionary water rights from the same source of water.

(3) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(4) "Discrete Administrative Use" means a federal reserved water right to divert or withdraw water from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest at administrative sites on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for district offices, ranger stations, guard stations, work centers, and housing; water used for facilities operated for administrative purposes; water used for permanently established tree nurseries and seed orchards; and water for maintaining riding and pack stock used for administrative purposes.

(5) "Dispersed Administrative Use" means a federal reserved water right to divert or withdraw water from time to time, as needed, from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest within a specified area on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for dust abatement and road construction; water for prescribed fire management; water for reclamation;



water used to establish vegetation; water used temporarily for establishment of nursery stock and seed orchards; and water for other incidental administrative purposes.

(6) “Effective Date of This Compact” means the date of the ratification of the Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is later.

(7) “In situ” means water with a surface expression used in the place of its natural occurrence and without need of a diversion structure, measured as a flow, level, or volume of water.

(8) “National Forest System Lands” means all lands within Montana that are owned by the United States and administered by the Secretary of Agriculture through the Forest Service, but does not include any lands within the exterior boundaries of National Forest System units that are not owned by the United States and administered by the Secretary of Agriculture through the Forest Service.

(9) “Parties” means the State and the United States.

(10) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(11) “South Fork Flathead Wild and Scenic River” means the segment of the South Fork of the Flathead River from its origin to Hungry Horse Reservoir located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq., was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, 16 U.S.C. 1274(a)(13), on October 12, 1976.

(12) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the Montana Department of Natural Resources and Conservation or the Director’s designee.

(13) “United States” means the United States of America and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of Agriculture or the Secretary’s designee.

(14) “Water Right Recognized Under State Law” means a water right or use created and administered under Montana law and includes all Forest Service water rights created in Article V of this Compact and state water reservations granted, but does not include a federal or tribal reserved water right recognized by the State.

(15) “Wetted Perimeter Methodology” means an instream flow methodology for fisheries flow based on habitat for food production in the shallow, fast-moving water of a stream. The wetted perimeter is the distance across the bottom and sides of a stream channel, measured at a riffle area, that is in contact with the water. A graph of the wetted perimeter versus discharge generally yields two inflection points. The upper inflection point of the graph is the level above which large increases in discharge result in a small increase of the wetted perimeter. The lower inflection point of the graph is the level below which small decreases in discharge result in large decreases of the wetted perimeter.

ARTICLE II  
FEDERAL RESERVED WATER RIGHTS

The Parties agree that the following water rights are the federal reserved water rights of the United States for the National Forest System Lands.

**A. Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for current and future Discrete Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact:

**1. Current Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for current Discrete Administrative Uses on National Forest System Lands as set forth in Table 1 and the specific listing and Abstracts attached to this Compact as Appendix 1. In the event there is a discrepancy between Table 1 and an Abstract contained in Appendix 1, the Abstract in Appendix 1 controls.

**2. Future Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for future Discrete Administrative Uses on National Forest System Lands as set forth in Table 1.

**B. Dispersed Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for Dispersed Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact, as set forth in Table 1. The period of use for Dispersed Administrative Uses on National Forest System Lands can be for any period throughout the year.

TABLE 1

MT Adj Basin	Priority Date	National Forests	Discrete Administrative Uses		Dispersed Administrative Uses	
			Current (AF/YR)	Future (AF/YR)	Total (AF/YR)	Volume (AF/YR)
39E	1906-09-24	Custer	0.00	2.00	2.00	12.20
39F	1906-09-24	Custer	0.25	2.00	2.25	11.90
39FJ	1906-11-05	Custer	0.00	2.00	2.00	5.50
40A	1902-08-16	Lewis & Clark				90.00
	1906-08-10	Gallatin	1.36	2.00	3.36	
40B	1906-11-05	Lewis & Clark	0.00	2.00	2.00	5.50
40C	1906-11-05	Lewis & Clark	0.00	2.00	2.00	2.70
41A	1906-11-05	Beaverhead-Deerlodge	2.13	2.13	4.26	121.00
41B	1906-11-05	Beaverhead-Deerlodge	1.26	2.00	3.26	42.90
41C	1906-11-05	Beaverhead-Deerlodge	8.90	8.90	17.80	70.90
41D	1906-11-05	Beaverhead-Deerlodge	202.27	49.27	251.54	310.60
41E	1906-04-12	Beaverhead-Deerlodge				85.50
			0.00	2.00	2.00	

957		MONTANA SESSION LAWS 2007				Ch. 213
	1905-05-12	Helena				1.20
41F	1902-08-16	Beaverhead-Deerlodge				98.50
			14.62	14.62	29.24	
	1902-08-16	Gallatin				69.50
41G	1906-04-12	Beaverhead-Deerlodge	2.50	2.50	5.00	81.80
41H	1906-03-07	Gallatin	14.63	14.63	29.26	147.60
41I	1905-10-03	Gallatin				15.40
			4.75	4.75	9.50	
	1905-10-03	Helena				169.30
41J	1905-10-03	Helena				36.00
			5.51	5.51	11.02	
	1906-11-06	Lewis & Clark				102.30
41K	1897-02-22	Lewis & Clark	6.63	6.63	13.26	44.80
41M	1897-02-22	Lewis & Clark	3.01	3.01	6.02	43.50
41O	1897-02-22	Lewis & Clark	3.75	3.75	7.50	24.40
41Q	1902-08-16	Lewis & Clark	0.33	2.00	2.33	72.10
41QJ	1906-11-06	Lewis & Clark				0.80
			0.00	2.00	2.00	
	1928-05-17	Helena				17.10
41R	1903-12-12	Lewis & Clark	0.00	2.00	2.00	9.50
41S	1902-08-16	Lewis & Clark	2.50	2.50	5.00	96.80
41U	1897-02-22	Lewis & Clark				11.20
			0.01	2.00	2.01	
	1928-05-17	Helena				14.40
42B	1907-03-02	Custer	0.00	2.00	2.00	13.10
42C	1907-03-02	Custer	39.35	39.35	78.70	133.70
42J	1907-03-02	Custer	0.00	2.00	2.00	11.20
43A	1906-08-10	Gallatin	1.51	2.00	3.51	43.40
43B	1902-09-04	Gallatin	14.33	14.33	28.66	136.10
43BJ	1902-09-04	Gallatin	9.64	9.64	19.28	22.50
43BV	1902-09-04	Gallatin	0.00	2.00	2.00	8.20
43C	1902-09-04	Custer	3.00	3.00	6.00	34.50
43D	1902-09-04	Gallatin				3.40
			2.25	2.25	4.50	
	1902-09-04	Custer				25.50
43N	1906-11-06	Custer	0.00	2.00	2.00	14.40
43P	1906-11-06	Custer	0.10	2.00	2.10	9.90
76B	1906-08-13	Kootenai	0.02	2.00	2.02	129.10
76C	1907-03-02	Kootenai	1.00	2.00	3.00	110.00
76D	1907-03-02	Kootenai	9.60	9.60	19.20	384.30
76E	1905-10-03	Beaverhead-Deerlodge				76.90
			4.00	4.00	8.00	
	1905-10-03	Lolo				52.10

76F	1928-05-17	Helena				65.90
			19.40	19.40	38.80	
	1906-11-06	Lolo				123.70
76G	1906-04-12	Beaverhead-Deerlodge				112.30
			85.75	9.75	95.50	
	1906-04-12	Helena				35.00
	1905-10-03	Lolo				17.00
76GJ	1905-10-03	Beaverhead-Deerlodge	0.00	2.00	2.00	51.90
76H	1897-02-22	Bitterroot				280.20
			96.82	75.00	171.82	
	1897-02-22	Lolo				59.00
76I	1897-02-22	Flathead	0.02	2.00	2.02	22.30
76J	1897-02-22	Flathead	4,247.75	2.16	4,249.91	120.00
76K	1897-02-22	Flathead	241.51	241.51	483.02	97.10
76L	1907-03-02	Flathead				3.40
			0.00	2.00	2.00	
	1907-03-02	Lolo				8.50
76LJ	1907-03-02	Flathead				246.40
			5.78	5.78	11.56	
	1897-02-22	Kootenai				12.20
76M	1906-11-06	Lolo	1,000.28	335.28	1,335.56	337.90
76N	1907-03-02	Kootenai				138.80
			4.26	4.26	8.52	
	1907-03-02	Lolo				168.40

**C. Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the primary purposes of the National Forest System Lands in Montana. The United States has a federal reserved water right to divert or withdraw water on National Forest System Lands, with the priority date for each Water Court basin set forth in Table 1 of this Compact, from a stream, lake, or pond, as needed for emergency fire suppression for the benefit of National Forest System Lands, and without a definition of the specific elements of a recordable water right, subject to the terms of Article III. Use of water for emergency fire suppression shall not be considered an exercise of the United States' federal reserved water rights for Discrete Administrative Uses as described in Article II, section A., or Dispersed Administrative Uses as described in Article II, section B.

**D. South Fork Flathead Wild and Scenic River.**

The United States has a federal reserved water right with a priority date of October 12, 1976, for instream flow on the South Fork Flathead Wild and Scenic River in the amount of the entire flow of the river, less any of the United States' Discrete Administrative Uses as described in Article II, section A., and Dispersed Administrative Uses as described in Article II, section B., provided that the instream flow water right is subordinate to all Water Rights Recognized Under State Law with a priority date before the Effective Date of This Compact.

This federal reserved water right ends at the point where the South Fork Flathead Wild and Scenic River flows into Hungry Horse Reservoir.

### ARTICLE III

#### IMPLEMENTATION OF FEDERAL RESERVED WATER RIGHTS

##### A. Abstracts.

Abstracts for all the United States' federal reserved water rights for Current Discrete Administrative Use on National Forest System Lands are set forth in Appendix 1. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights for current Discrete Administrative Uses as described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

##### B. Enforcement and Administration of Federal Reserved Water Rights.

1. When a controversy arises between the United States' federal reserved water rights described by this Compact and another holder of a Water Right Recognized Under State Law or, for enforcement pursuant to Article VIII, section B., when there is a question concerning the use of water on National Forest System Lands under this Compact, the United States, the State, or a holder of a Water Right Recognized Under State Law may petition a court of competent jurisdiction for relief. Resolution of any controversy must be governed by the terms of this Compact when applicable or, to the extent not applicable, by appropriate federal or state law.

2. For the purpose of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter National Forest System Lands to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing in this Compact waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter National Forest System Lands for which a federal reserved water right is described in Article II for the purposes of data collection on Forest Service water diversions or notice requirements by the United States, pursuant to Article III, section C.3., of this Compact.

##### C. Use of Federal Reserved Water Rights.

###### 1. Federal Reserved Water Rights.

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right.

###### 2. Development of Future Discrete Administrative Uses.

The United States, without prior approval of the Department, may develop a Discrete Administrative Use after the Effective Date of This Compact as described in Article II, section A.2., provided that:

(a) the purpose of use of the water is for a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.2.;

(b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and

(c) the use shall not adversely affect a senior Water Right Recognized Under State Law.

### 3. Use of Dispersed Administrative Uses.

The United States, without prior approval of the Department, may use its federal reserved water right for Dispersed Administrative Uses, as needed, provided that:

(a) the purpose of use of the water is for a Dispersed Administrative Use as defined in Article I(5) and described in Article II, section B.;

(b) the total quantity of water for Dispersed Administrative Uses diverted or withdrawn shall not exceed the amount as set forth in Article II, Table 1;

(c) the Forest Service shall provide notice of a Dispersed Administrative Use as follows:

(i) for uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

(ii) for uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:

(A) source of water;

(B) purpose of use;

(C) starting and ending date of diversion;

(D) place of use;

(E) diversion flow rate;

(F) maximum volume of water to be diverted or withdrawn per day; and

(G) name and contact information for the contractor, the local Forest Service Ranger District, and the local Department Water Resources Regional Office.

(iii) for uses greater than 60,000 gallons per day from a single source of supply, the local Department Water Resources Regional Office must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in Article III, section C.3.(c)(ii). Notification to the Department Water Resources Regional Office must provide the following information:

(A) source of water;

(B) legal description of the point of diversion or withdrawal;

(C) place of use;

(D) map showing preceding three items;

(E) purpose of use;

(F) starting and ending date of use;

(G) diversion flow rate;

(H) maximum volume of water to be diverted or withdrawn per day; and

(I) name and contact information for the contractor and the local Forest Service Ranger District.

(d) the diversion or withdrawal of water for a Dispersed Administrative Use shall not adversely affect a senior Water Right Recognized Under State Law; and

(e) if notified that the diversion or withdrawal for a Dispersed Administrative Use is adversely affecting a senior Water Right Recognized Under State Law, the Forest Service will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the Forest Service can move the diversion or withdrawal to another source of supply or satisfy the senior user and the Department Water Resources Regional Office Manager that use will not adversely affect the senior user or users.

#### **D. Change in Use of Federal Reserved Water Rights.**

##### **1. Discrete Administrative Uses.**

The United States, without approval of the Department, may change a Discrete Administrative Use described in Article II, section A., provided that:

(a) the purpose of use of the water remains a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.;

(b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and

(c) the change shall not adversely affect a Water Right Recognized Under State Law.

##### **2. Dispersed Administrative Uses.**

The United States' federal reserved water right to divert or withdraw water for Dispersed Administrative Uses as described in Article II, section B., shall not be changed to any other use.

##### **3. Emergency Fire Suppression.**

The United States' federal reserved water right to divert or withdraw water for Emergency Fire Suppression as described in Article II, section C., shall not be changed to any other use.

##### **4. South Fork Flathead Wild and Scenic River.**

The United States' federal reserved water right for instream flow for the South Fork Flathead Wild and Scenic River, as described in Article II, section D., shall not be changed to any other use.

#### **E. Reporting Requirements.**

1. The Forest Service agrees to provide a report to the Department on an annual basis or on a periodic basis agreed to by the Parties containing information on development of Discrete Administrative Uses, as described in Article III, section C.2., and any change of a Discrete Administrative Use, as described in Article III, section D.1.

2. Upon request by the Department, the Forest Service shall report to the Department information it has regarding water use for Emergency Fire Suppression, as described in Article II, section C.

3. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(ii) and (iii), upon request by the Department, the Forest Service shall provide copies of notice postings for the stream or basin requested.

4. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(i), upon request by the Department, the Forest Service shall report information it has available. In the event the Department requests additional information for future reports on a stream or basin for enforcement or water distribution purposes, the Forest Service agrees to comply with the request.

#### **F. Ownership Interest in Water for Purposes of Statewide Adjudication.**

The federal reserved water rights for Administrative Uses and Emergency Fire Suppression described in Article II, sections A., B., and C., are ownership interests in water and its use for each water source within National Forest System Lands that has been affected by a temporary preliminary decree or preliminary decree.

### ARTICLE IV STATE LAW PROVISIONS

#### **A. Compact Principles.**

In order to promote settlement of issues between the United States and the State, the United States agrees to relinquish any and all claims to federal reserved water rights for instream flows on National Forest System Lands. The State agrees that, in consideration for the United States' agreement not to pursue federal reserved water rights for instream flows on National Forest System Lands, the following principles, subject to the terms of this Compact, shall be included in state law:

##### **1. Forest Service Water Rights Recognized Under Law Created in This Compact.**

There shall be created by this Compact Water Rights Recognized Under State Law held by the Forest Service as set forth in Article V, Table 2.

##### **2. State Water Reservation Process.**

(a) There shall be a state water reservation process providing a means for the United States to appropriate state-law-based water rights for a minimum instream flow, level, or quality of water that provides an opportunity for hearing and judicial review.

(i) Any appropriation granted under this process will result in a water right held by the United States that is protectable and enforceable under state law, and shall not be subject to periodic review or reallocation.

(ii) The date of appropriation for water rights granted under the state water reservation process will be the date of filing of the application for state water reservations and will be senior in priority to any applications for state water reservations filed after that date.

(b) The Parties agree that the language of 85-2-316, MCA, on the Effective Date of This Compact and the terms of Article VI of this Compact satisfy the principles in Article IV, section A.2.

##### **3. New State Water Reservation Section.**

The United States shall have the right to apply for a state water reservation under a new specific procedure in limited circumstances for state water reservations as set forth in Article VI, section B.



#### 4. **Standing.**

In the ongoing statewide adjudication, the United States shall have the right to object to and participate as an objector to any water right claim for water use or storage on or water conveyed across National Forest System Lands. The Parties agree that the language of 85-2-233, MCA, on the Effective Date of This Compact satisfies the principles in Article IV, section A.4.

#### B. **State Law Adopted as a Condition Precedent to This Compact.**

Subject to Article VIII, section D., the Parties agree that as a condition precedent to this Compact, the following provisions will be adopted as state law:

##### 1. **Sequencing.**

(a) The permitting process for water appropriations under state law and the permitting for the access and use of National Forest System Lands in relation to water appropriations will be sequenced to avoid conflict between state and federal permitting.

(b) The applicant is required to show proof of federal authorization before the application for a new appropriation of water or a change of appropriation will be correct and complete when:

(i) a state permit is required prior to a new appropriation of water, including ground water, or a change of appropriation; and

(ii) a federal authorization is required to occupy, use, or traverse National Forest System Lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water for the appropriation or change of appropriation.

(c) The state permit for a new appropriation shall be subject to any terms, conditions and limitations related to the use of water contained in the required federal authorization.

(d) The Parties agree that the language of 85-2-302, 85-2-310, 85-2-311, 85-2-312, and 85-2-402, MCA, on the Effective Date of This Compact satisfies this condition precedent.

##### 2. **Change of Diversionary Use to Instream Flow.**

In addition to any other process available under state law, the Forest Service may apply for a change of use from an appropriation right to divert or withdraw water on land owned by the United States that is located within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact to an instream flow water right on National Forest System Lands within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact in accordance with procedures required under state law. The Parties agree that the language of [section 2] on the Effective Date of This Compact satisfies the principles in Article IV, section B.2.

### ARTICLE V

#### WATER RIGHTS RECOGNIZED UNDER STATE LAW

There is created by this Compact appropriations of Water Rights Recognized Under State Law held by the Forest Service for instream flow or in situ use as set forth in Article V.

## A. Water Rights Recognized Under State Law

TABLE 2

Water Right Number	Source	Flow Rate (CFS)	Lower Stream Point				Upper Stream Point			
			SEC	TWP	RGE	QTR	SEC	TWP	RGE	QTR
41F-30023850	Horse Creek	3.0	25	10S	01W	NESE	29	10S	01W	SWNW
41F-30023851	Sheep Creek	4.0	1	12S	02E	SWSE	20	12S	03E	SWNW
41H-30023852	East Fork Hyalite Creek	7.0	23	04S	06E	SWNW	12	05S	06E	SWSW
41H-30023853	Hyalite Creek	28.0	14	03S	05E	SESW	15	04S	06E	NWSW
41H-30023854	West Fork Hyalite Creek	12.0	26	04S	06E	NWNW	23	05S	06E	NW
41I-30023855	Beaver Creek	10.0	19	12N	02W	SWNE	11	12N	02W	SENE
41J-30023856	Sheep Creek	27.0	2	12N	05E	NWSW	5	12N	06E	SESE
41J-30023857	Tenderfoot Creek	15.0	30	14N	05E	NENE	22	14N	05E	NWSW
41S-30023858	Dry Wolf Creek	5.0	28	15N	10E	SWNW	31	15N	10E	SWSW
41S-30023859	South Fork Judith River	3.5	1	12N	11E	NENE	4	11N	11E	SENE
43B-30023860	Little Mission Creek	2.5	14	03S	11E	NENW	27	03S	11E	NWNE
43B-30023861	Pine Creek	4.0	8	04S	10E	NWSW	16	04S	10E	NWSW
43B-30023862	South Fork Deep Creek	7.0	5	04S	10E	NENW	14	04S	10E	NWNW
43B-30023863	Upper Deer Creek	2.0	13	02S	14E	NENW	29	03S	14E	SESE
76B-30023864	North Fork Yaak River	24.0	15	37N	31W	SWNE	4	37N	31W	NE
76B-30023865	Pete Creek	15.0	5	35N	32W	NENW	29	36N	32W	SWNW
76B-30023866	Seventeenmile Creek	40.0	27	34N	33W	NWSE	5	33N	32W	NWNW
76B-30023867	South Fork Yaak River	19.0	2	35N	32W	NENE	5	34N	31W	SWSW
76B-30023868	Spread Creek	50.0	3	35N	33W	SWSE	29	36N	33W	SENE
76B-30023869	West Fork Yaak River	30.0	32	37N	31W	NWNE	35	37N	32W	NENE
76C-30023870	East Fisher	15.0	31	26N	29W	NWNE	31	26N	29W	NENE
76C-30023871	Silver Butte/Fisher River	34.0	17	26N	29W	NENE	35	26N	30W	SENE
76C-30023872	West Fisher River	28.0	1	26N	30W	NWNW	4	26N	30W	SWSE
76D-30023873	Barron Creek	2.0	27	32N	29W	SWNW	21	32N	30W	NW
76D-30023874	Big Cherry Creek	40.0	27	29N	31W	SWSW	3	28N	31W	NENE
76D-30023875	Big Creek	19.0	3	34N	29W	NWNW	34	35N	30W	NWNW
76D-30023876	Bobtail Creek	5.0	20	31N	31W	NWSW	8	31N	31W	NESW
76D-30023877	Bristow Creek	12.0	14	32N	29W	NWNW	8	32N	29W	NESE
76D-30023878	Callahan Creek	60.0	24	31N	34W	NWNW	21	31N	34W	NWSE
76D-30023879	Canyon Creek	4.0	22	31N	29W	SWSE	29	31N	28W	SWSW
76D-30023880	Cripple Horse Creek	8.0	2	31N	29W	NESE	5	31N	28W	SWSW
76D-30023881	Five Mile Creek	4.0	17	32N	28W	SWNW	19	32N	27W	NENE
76D-30023882	Granite Creek	21.0	2	29N	31W	NWNW	5	29N	31W	NESE
76D-30023883	Libby Creek	40.0	16	28N	30W	NWNW	18	28N	30W	SESE
76D-30023884	Midas Creek	1.5	31	28N	30W	SWNW	8	27N	30W	SWSE
76D-30023885	North Fork Big Creek	14.0	28	35N	30W	SWSE	31	36N	30W	SWSE
76D-30023886	Parmenter Creek	10.0	7	30N	31W	SWNE	18	30N	32W	SWSW
76D-30023887	Quartz Creek	17.5	12	31N	32W	SESW	2	31N	32W	SWNE
76D-30023888	Ross Creek	20.0	8	28N	33W	NENE	17	28N	34W	SWNW
76D-30023889	South Fork Big Creek	20.0	33	35N	30W	SENE	5	32N	30W	NENE
76D-30023890	Therriault Creek	4.0	3	35N	26W	SWNW	3	35N	26W	SENE
76D-30023891	Young Creek	6.0	17	37N	28W	NESE	8	37N	29W	SE
76E-30023892	Middle Fork Rock Creek	41.0	18	04N	15W	NENE	25	04N	16W	NWSW
76E-30023893	Rock Creek at Bitterroot Flat	150.0	7	08N	17W	NWNW	7	07N	16W	SESE
76E-30023894	Rock Creek at Mouth	250.0	13	11N	17W	SENE	30	11N	16W	SWNW
76E-30023895	West Fork Rock Creek	12.0	35	06N	16W	NESE	2	05N	17W	NWSW
76F-30023896	Clearwater River at Lake Alva	13.0	24	18N	16W	SWSE	24	18N	16W	NWSE
76F-30023897	Copper Creek	11.0	26	15N	08W	SENE	9	15N	08W	NENE
76F-30023898	Morrell Creek	12.0	35	17N	15W	SWSE	1	17N	15W	NESE

76F-30023899	North Fork Blackfoot River	39.0	2	15N	11W	NWNW	27	16N	11W	NESE
76F-30023900	Placid Creek	7.0	13	16N	16W	SWSW	10	16N	16W	NWNW
76F-30023901	Poorman Creek	7.0	8	13N	08W	NWSW	24	13N	08W	SENE
76G-30023902	Little Blackfoot River	17.0	30	09N	06W	NENW	12	08N	07W	SWNE
76G-30023903	Schwartz Creek	10.0	4	11N	17W	NWNW	8	11N	17W	SESW
76H-30023904	Lolo Creek	41.0	29	12N	22W	NENE	25	12N	23W	NENW
76H-30023905	South Fork Lolo Creek	15.0	6	11N	21W	NWNW	7	11N	21W	NWNW
76J-30023906	Wounded Buck Creek	11.0	17	29N	18W	SWNW	30	29N	18W	SWSW
76K-30023907	Bond Creek	6.0	24	25N	18W	NWNW	17	25N	17W	NWSE
76K-30023908	Cedar Creek	7.0	12	22N	18W	NENW	21	22N	18W	SESE
76K-30023909	Cold Creek	22.0	28	21N	17W	SWNE	33	21N	18W	NENW
76K-30023910	Elk Creek	25.0	16	20N	17W	NENE	23	20N	18W	SENW
76K-30023911	Goat Creek	11.0	17	23N	17W	NWSW	12	23N	17W	NWNE
76K-30023912	Groom Creek	2.5	12	25N	18W	SWSW	5	25N	17W	SE
76K-30023913	Hall Creek	2.5	11	25N	18W	SENE	11	25N	18W	NENE
76K-30023914	Lion Creek	19.0	8	22N	17W	SWNE	10	22N	16W	NWSW
76K-30023916	North Fork Lost Creek	6.0	27	25N	17W	NWSE	5	24N	16W	NESE
76K-30023917	Piper Creek	9.0	8	22N	17W	SWSW	33	22N	18W	NENW
76K-30023918	Scout Creek	1.5	12	23N	17W	NWNE	19	23N	16W	SESE
76K-30023919	South Fork Lost Creek	6.0	6	24N	16W	SWSW	19	24N	16W	NWSE
76LJ-30023920	Red Meadow Creek	16.0	7	35N	21W	SWNW	11	35N	22W	NWNW
76LJ-30023921	Trail Creek	37.0	34	37N	22W	SESE	28	37N	22W	SESW
76M-30023922	Rattlesnake Creek	17.0	2	13N	19W	NWNE	14	14N	18W	NENW
76M-30023923	Trout Creek	28.0	23	16N	26W	SWSW	5	15N	26W	NESW
76N-30023924	Bull River	29.0	14	28N	33W	NWNW	14	28N	33W	NENW
76N-30023925	Graves Creek	28.0	36	23N	30W	SWSW	36	23N	30W	NWNE
76N-30023926	Trout Creek	14.0	24	24N	32W	NENE	28	24N	32W	SWSW
76N-30023927	Vermilion River	110.0	14	24N	31W	SWSE	7	24N	30W	NWSW
Water Right Number	Source	Volume (AF/YR)	SEC	TWP	RGE	QTR SEC	SEC			
76M-30023928	Shoofly Meadow	50.75	4	14N	17W	SW				

**B. Priority Date.**

The priority date of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is the Effective Date of This Compact.

**C. Purpose of Use.**

Except for Water Right Number 76M-30023928, the purpose of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is fishery. The purpose of use for Water Right Number 76M-30023928, created in Article V, section A., is wildlife, which includes habitat.

**D. Period of Use.**

The period of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is January 1 to December 31.

**E. Limitation on Objections to Changes.**

A Forest Service Water Right Recognized Under State Law created in Article V, section A., shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

#### **F. Administration and Enforcement.**

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are appropriations under state law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations as all other holders of a Water Right Recognized Under State Law.

#### **G. Concurrent With Other Instream Flow Uses.**

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are for instream uses or in situ nonconsumptive use, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. The Forest Service Water Rights Recognized Under State Law created in Article V, section A., shall run Concurrently with other instream flow or in situ rights.

### **ARTICLE VI**

#### **APPLICATIONS FOR STATE WATER RESERVATIONS UNDER STATE LAW**

##### **A. State Water Reservation.**

The Forest Service may apply for a state water reservation to maintain a minimum flow, volume, level, or quality of water on National Forest System Lands under 85-2-316, MCA, in all basins within the State including basins or subbasins closed to new appropriations on or after the Effective Date of This Compact, subject to the terms of this Compact, for any purpose authorized by federal law applicable to National Forest System Lands. Any purpose authorized by federal law applicable to National Forest System Lands shall be considered a beneficial use under state law for the purposes of this Compact but shall set no precedent as to whether such purposes are beneficial uses under state law outside the terms of this Compact. A state water reservation issued under 85-2-316, MCA, is a Water Right Recognized Under State Law.

##### **B. Specific Procedure in Limited Circumstances.**

1. (a) For a state water reservation application pursuant to Article VI, section A., when the purpose of the reservation is to maintain a minimum flow for fish and the amount requested is based on the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), a correct and complete application shall constitute:

- (i) conclusive evidence of the purpose of the reservation;
- (ii) conclusive evidence of the need for the reservation;
- (iii) prima facie evidence that the amount requested is accurate and suitable:

(A) at the lower inflection point of the Wetted Perimeter Methodology; or

(B) at the upper inflection point of the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), when the purpose of the reservation is for an existing population of bull trout, westslope cutthroat trout, Yellowstone cutthroat trout, Columbia River redband trout, arctic grayling, or any other fish species listed in the future under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq.; and

- (iv) prima facie evidence that the reservation is in the public interest.

(b) By mutual agreement of the Parties, the Department may propose an administrative rule under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, to establish a methodology, other than the Wetted Perimeter Methodology, for an application for a state water reservation to maintain a minimum flow under Article VI, section B.1.(a), for fish species identified in Article VI, section B.1.(a)(iii)(B). Rulemaking under this subsection shall not be considered a modification of this Compact. The Department may adopt a rule under this subsection only if it finds, based on scientific and technical evidence in the administrative record, that:

(i) the proposed methodology enjoys acceptance in the scientific community as a methodology for establishment of minimum flow for pertinent fish species based on evidence that includes the existence of peer-reviewed studies, testimony or publications by experts in the field, and previous use in Montana or another relevant location; and

(ii) the results of the proposed methodology with respect to the stream that is the subject of the application are either based on field data collected with respect to the stream or susceptible to verification based on field data.

2. For purposes of Article VI, section B., a correct and complete application shall be substantially in the form attached to this Compact as Appendix 3. Appendix 3 may be modified at any time by the consent of both Parties and shall not be considered a modification of the Compact.

3. For the purposes of Article VI, section B., the Department shall issue a state water reservation unless an objector proves by a preponderance of the evidence that:

(a) the amount of water under the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), was not accurately measured or calculated, that the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), could not suitably be applied to the stream reach applied for, or that there is not an existing population of the fish species set forth in Article VI, section B.1.(a)(iii)(B), identified in the application for state water reservation in the stream reach applied for; or

(b) for the public interest, there is a projected water development project:

(i) that is feasible;

(ii) that is reliably projected to be commenced within ten (10) years or within ten (10) years after a basin closure is removed;

(iii) in which the objector has or can reasonably obtain a possessory interest or the written consent of the Person or Party with the possessory interest in the property where the water is to be diverted, impounded, stored, transported, and put to beneficial use;

(iv) for which the amount of water needed for the project is reasonable;

(v) for which water needed for the project is not reasonably available from any other water source;

(vi) for which the water needed for the project, based on amount and period of use, would be unavailable if the proposed reservation was granted;

(vii) that would not be feasible with water either in a lesser amount or at a different location if the reservation was granted; and

(viii) that serves a significant public need.

4. If the Department determines that proofs under Article VI, section B.3.(a), are met or that proofs for all criteria under Article VI, section B.3.(b), are met, the Department may issue, modify, or deny the reservation or may subordinate the reservation to the actual development of the project identified in Article VI, section B.3.(b).

### **C. General Provisions.**

1. The Forest Service's ability to apply for a state water reservation pursuant to Article VI in any basin or subbasin terminates thirty (30) years after the state court issues a final decree for that water basin under 85-2-234(1), MCA, or thirty (30) years after the Effective Date of This Compact, whichever is later. The termination of the Forest Service's ability to apply for a state water reservation pursuant to Article VI under this subsection shall not restrict the Forest Service's ability to apply for a water right in any process available to the Forest Service under state law, including 85-2-316, MCA, provided that, the terms of this Compact shall not apply.

2. A state water reservation issued to the Forest Service under Article VI shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

3. In any contested case proceeding held under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all entities who are involved in a proceeding.

4. Any appeal of an administrative decision under Article VI shall be in state court and shall be filed at the First Judicial District in Helena, and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated.

5. A state water reservation issued to the Forest Service pursuant to Article VI is not subject to periodic review by the Department as set forth in 85-2-316(10), MCA. A state water reservation issued to the Forest Service pursuant to Article VI shall not be reallocated to another qualified reservant with a retained priority date as set forth in 85-2-316(11), MCA. Unless provided in this Compact, all other provisions of state law apply to a state water reservation issued to the Forest Service.

### **D. Administration and Enforcement.**

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations of water use as all other holders of a Water Right Recognized Under State Law.

### **E. Concurrent With Other Instream Flow Uses.**

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law for instream uses or in situ nonconsumptive uses, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. Unless otherwise provided in the terms and conditions, a state water

reservation issued pursuant to Article VI shall run Concurrently with other instream flow rights.

**F. Department Reporting to Montana Legislature.**

For the period of time set forth in Article VI, section C.1., the Department shall biennially report to the Environmental Quality Council or other appropriate legislative committee the state water reservations applied for by the Forest Service since the previous report and the Department action on applications for state water reservations by the Forest Service since the previous report.

ARTICLE VII

GENERAL PROVISIONS

**A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the Forest Service described in this Compact and any rights to water of an Indian tribe in Montana or of any federally derived water right of an individual or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The Parties to this agreement recognize that the water rights described in This Compact are junior to any tribal water rights with a priority date before the Effective Date of This Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than National Forest System Lands.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian tribes and tribal members in Montana.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding boundaries or property interests in the State of Montana.

**B. General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of federal reserved water rights or the interpretation or administration of future compacts between the United States and the State or between the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to state law on National Forest System Land in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under state law in the basins affected by this Compact;

3. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

4. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

5. to create or deny substantive rights through headings or captions used in this Compact;

6. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;

7. with respect to federal reserved water rights, to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs pursuant to a ruling by a court of competent jurisdiction or Act of Congress;

8. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Forest Service and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

9. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by law; or

10. to expand or restrict rights of the United States under federal law except as expressly provided in this Compact.

#### **C. Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

#### **D. Severability.**

Except as provided in Article VIII, section C., the provisions of this Compact are not severable.

#### **E. Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

#### **F. Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required under this Compact, except service in litigation, shall be:

1. State: Upon the Director of the Department or other officials that the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture or other officials that the Secretary may designate in writing.

### **ARTICLE VIII**

#### **FINALITY OF COMPACT AND DISMISSAL OF CLAIMS**

##### **A. Binding Effect.**

1. The Effective Date of This Compact is the date of the ratification of this Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Subject to Article VIII, section C., once effective, all of the provisions of this Compact shall be binding on:

(a) the State and a Person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and

(b) except as otherwise provided in Article VII, section A., the United States and a Person or entity of any nature whatsoever using, claiming, or in any



manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date of This Compact, this Compact shall not be modified without the consent of both Parties. Unilateral substantive modification of the terms of this Compact by either Party, as determined by a court of competent jurisdiction, shall render this Compact voidable at the election of the other Party.

3. On approval of this Compact by a court of competent jurisdiction and entry of a decree by such court confirming the rights described in this Compact, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained under 85-2-233, MCA, this Compact shall be voidable by action of and without prejudice to either Party.

#### **B. Enforcement of Compact.**

1. Either Party may seek enforcement of the terms of this Compact in a court of competent jurisdiction, subject to the limitations of remedies provided in Article VIII, section C.

2. When the enforcement action involves issues of notice or reporting required under Article III, sections C.3.(c) and E., the State shall provide written notice to the Forest Service and allow a reasonable opportunity to resolve the issue prior to filing an enforcement action.

3. Except as provided in Article VIII, section C., the remedy for an action for enforcement of the terms of this Compact shall not include termination of the Compact in whole or in part.

#### **C. Exclusive Remedy for Changes in State Law.**

1. For the time period set forth in subsection 11, if the State enacts a law that results in an alleged material impairment of any principle set forth in Article IV, section A.2., A.3., or A.4., the United States may, within 90 days of the effective date of the law, provide notice to the State of the alleged material impairment. If the United States fails to provide notice within 90 days of the effective date of the law, the United States is barred from taking any action under this section regarding alleged material impairment by enactment of the law.

2. Following the receipt of notice provided in subsection 1, the Parties shall meet within 30 days to discuss the alleged material impairment. The Parties may each appoint a negotiator and may utilize a neutral third party to discuss resolution of the alleged material impairment.

3. If the State does not agree that the legislation has resulted in material impairment within 90 days or such time as the Parties may agree or if no other alternative resolution has been found, the United States may seek a judgment in a court of competent jurisdiction declaring that the specified act of the Montana Legislature has resulted in material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4. The only remedy available under this subsection is a declaratory judgment as to whether or not the change in state law results in a material impairment of a principle set for in Article IV, section A.2., A.3., or A.4. The Parties shall jointly request the court to retain jurisdiction through all proceedings under this section.

4. If the State agrees or if a court finds that changes to state law have materially impaired a principle set forth in Article IV, section A.2., A.3., or A.4., the United States may take no action under subsection 5 until the final

adjournment of the next regular session of the Montana Legislature. If the material impairment is cured through enacted legislation to the satisfaction of the United States, the United States is barred from taking further action under this section.

5. If, in the opinion of the United States, the State has failed to enact legislation that cures a material impairment as provided in subsection 4, the United States may initiate severance and termination of portions of the Compact as provided in subsection 8 by sending notice to the State within 90 days from the end of the regularly scheduled legislative session. If this notice is not served within the 90-day period, the United States is barred from severing and terminating portions of the Compact based on material impairment.

6. If the State has enacted a law to cure the material impairment and the United States does not agree that the material impairment has been cured by the enactment, the State shall have the opportunity within 90 days from receipt of the notice served by the United States to seek a judgment declaring that the specific enactment has cured the material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4., either by:

- (a) invoking any retained jurisdiction of the court; or
- (b) if no court has retained jurisdiction over the dispute, seeking a judgment in a court of competent jurisdiction.

7. If the State does not file an action within the 90-day period provided in subsection 6, the notice served by the United States becomes effective at the expiration of the 90-day period. If the State files for declaratory judgment and the court finds that legislation enacted by the State cures the material impairment, then the notice served by the United States does not operate to sever or terminate portions of the Compact under subsection 8. If the court finds that the enacted legislation does not cure the material impairment, the notice served by the United States becomes effective when the court's judgment becomes final either through the exhaustion of all available appeals or the running of the time for taking an appeal.

8. If the United States elects to sever and terminate portions of the Compact under this section, the Parties agree that Article IV, section A.2., A.3., and A.4., and Article VI together and in their entirety are severed from the Compact and all rights and obligations under those provisions are terminated. All other provisions of this Compact remain in force and effect. If the portions of the Compact are severed and terminated, the Parties agree that the United States shall retain all water rights contained in Articles II and V and state water reservations granted to the United States prior to severance and termination under this subsection.

9. If the United States severs and terminates portions of the Compact as provided in subsection 8, the United States may file federal reserved water right claims in the state general stream adjudication, in the Montana Water Court or other state court that succeeds to the Montana Water Court's jurisdiction to conduct the general stream adjudication, for instream flow for any stream on which the United States has not been granted a Water Right Recognized Under State Law for an instream flow or an in situ right. The United States shall file all federal reserved water right claims for instream flow with the state court within twelve (12) months after severance and termination of portions of the Compact become effective. The United States agrees that, regardless of the dates of the reservation of the National Forest System Lands for which a federal reserved

water right is claimed, the priority date of the federal reserved water right claim will be the Effective Date of This Compact.

10. The remedy provided in Article VIII, section C., is the exclusive remedy for actions brought as a result of changes to state law that materially impair the provisions of Article IV, section A.2., A.3., or A.4. There is no remedy under this Compact for changes to state law except as applied under this section to Article IV, section A.2., A.3., and A.4., and as provided in Article VIII, section A.2.

11. This section and the procedure and remedy provided under this section shall remain in effect for a period of thirty (30) years after the state court issues a final decree for all water basins under 85-2-234(1), MCA, that contain National Forest System Lands. This period of time under this subsection is tolled for any period of time during which state law materially impaired the interest of the United States as agreed to by the State or determined by a court of competent jurisdiction. After this period, all rights and remedies under this section terminate.

#### **D. Limits on Article IV, Section B.**

Article IV, section B., is not an enforceable term of this Compact, and changes to the provisions of state law as described in Article IV, sections B.1. and B.2., after the Effective Date of This Compact shall not give rise to any cause of action in law or in equity or provide any remedy under this Compact.

#### **E. State Court Filing.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the federal reserved water rights described in this Compact into a decree or decrees entered in the court. The Parties understand and agree that the submission of this Compact to a state court, as provided for in this Compact, does not expand or restrict the jurisdiction of the state court or expand or restrict in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

#### **F. Dismissal of Filed Claims.**

At the time the state courts approve the federal reserved water rights described in Article II of this Compact and enter a decree or decrees confirming the rights described, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 of this Compact for National Forest Service Lands. If this Compact fails approval or a federal reserved water right described in this Compact is not confirmed, the specified claims shall not be dismissed.

#### **G. Consent Decree.**

This Compact may be filed as a consent decree in federal court if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described in this Compact.

#### **H. Settlement of Claims.**

The Parties intend that the water rights described in this Compact, together with the rights and obligations set forth in Article IV, are in full and final

settlement of all federal reserved water right claims filed by the United States or that could have been filed by the United States as of the Effective Date of This Compact for the primary purposes of the National Forest System Lands in the State of Montana. Pursuant to this settlement, the United States hereby relinquishes forever on the Effective Date of This Compact all said federal reserved water right claims.

### **I. Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the \_\_\_\_ day of \_\_\_\_, 2007.

**Section 2. Change in appropriation right authorization for instream flow — United States department of agriculture, forest service.** (1) (a) The department shall accept and process an application by the United States department of agriculture, forest service for a change in appropriation right under the provisions of 85-2-402 and this section to protect, maintain, or enhance streamflows to benefit the fishery or other resources on national forest system lands.

(b) As used in this section, “national forest system lands” has the same meaning as that provided in [section 1, Article I].

(c) To change an appropriation right, the United States department of agriculture, forest service must own the appropriation right that it seeks to change to an instream flow right, the diversion or withdrawal that is to be changed to instream flow must be located within or immediately adjacent to the exterior boundaries of national forest system lands on the date provided in [section 1, Article IV.B.2.], and the stream reach in which the streamflow is to be protected, maintained, or enhanced must be located within or immediately adjacent to the exterior boundaries of national forest system lands as of the date provided in [section 1, Article IV.B.2.]. The application for a change in appropriation right must:

(i) include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced; and

(ii) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) In addition to the requirements of 85-2-402, when applying for a change in appropriation right pursuant to this section, the United States department of agriculture, forest service, shall prove by a preponderance of the evidence that:

(a) the change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed instream flow use is needed to protect, maintain, or enhance streamflows to benefit the fishery or other resources.

(3) The proposed method of measurement of the water to protect, maintain, or enhance streamflows to benefit the fishery or other resources must be approved by the department before a change in appropriation right may be approved.

(4) The department is not responsible for costs associated with installing devices or providing personnel to measure streamflows according to the measurement plan submitted under this section.

(5) If an appropriation right is changed pursuant to this section, the priority of the appropriation right remains the same as the appropriation right that was changed.

(6) A change in appropriation right authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) The maximum quantity of water that may be subject to a change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources is the amount historically diverted. However, only the amount historically consumed or a smaller amount if specified by the department in the change in appropriation right authorization may be used to protect, maintain, or enhance streamflows to benefit the fishery or other resources below the existing point of diversion.

(8) The department may modify or revoke the change in appropriation right up to 10 years after it is approved if an appropriator with a priority of appropriation that is earlier than the change in appropriation right that was granted submits new evidence that was not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

**Section 3.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436;

(d) *in the case of the United States department of agriculture, forest service,:*

(i) *instream flows and in situ use of water created in [section 1, Article V]; or*

(ii) *to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with [section 2]; or*

(~~d~~)*(e)* temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department

should proceed with the action requested by the person providing the information.

(19) “Waste” means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) “Water” means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) “Water division” means a drainage basin as defined in 3-7-102.

(22) “Water judge” means a judge as provided for in Title 3, chapter 7.

(23) “Water master” means a master as provided for in Title 3, chapter 7.

(24) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

**85-2-102. (Effective July 1, 2009) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) *in the case of the United States department of agriculture, forest service,:*

(i) *instream flows or in situ use of water created in [section 1, Article V]; or*

(ii) *to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with [section 2]; or*

(e)(d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) “Beneficial use”, unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) “Certificate” means a certificate of water right issued by the department.

(4) “Change in appropriation right” means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.



(22) “Water master” means a master as provided for in Title 3, chapter 7.

(23) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.”

**Section 4.** Section 85-2-302, MCA, is amended to read:

**“85-2-302. Application for permit — definition.** (1) Except as provided in 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) *Subject to subsection (4)(b), the* The applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) *If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.*

(c) *As used in this part, “national forest system lands” has the same meaning as that provided in [section 1, Article I].*

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated.”

**Section 5.** Section 85-2-306, MCA, is amended to read:

**“85-2-306. Exceptions to permit requirements.** (1) (a) *Except as provided in subsection (1)(b), ground* ~~Ground~~ water may be appropriated only by

a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works. ~~or, if~~

(b) *If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.*

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification *or a written federal special use authorization* as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. ~~Upon~~ *Subject to subsection (7)(b), upon* receipt of a correct and complete application for a ~~stockwater~~ *stock water* provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

*(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.*

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

**Section 6.** Section 85-2-308, MCA, is amended to read:

**"85-2-308. Objections.** (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 and [section 2], if applicable, are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department.”

**Section 7.** Section 85-2-310, MCA, is amended to read:

**“85-2-310. Action on application for permit or change in appropriation right.** (1) The department shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) *If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.*

~~(2)~~(3) ~~However, an~~ *Except as provided in subsection (2), an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department, unless the applicant is first granted an opportunity to be heard. If ~~no~~ an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.*

~~(3)~~(4) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

~~(4)~~(5) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

- (a) an application is not corrected and completed as required by 85-2-302;
- (b) the appropriate filing fee is not paid;
- (c) the application does not document:
  - (i) a beneficial use of water;
  - (ii) the proposed place of use of all water applied for;
  - (iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.
  - (iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and
  - (v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:
    - (A) each person who will use the water and the amount of water each person will use;
    - (B) the proposed place of use of all water by each person;
    - (C) the nature of the relationship between the applicant and each person using the water; and
    - (D) each firm contractual agreement for the specified amount of water for each person using the water; or
- (d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.”

**Section 8.** Section 85-2-311, MCA, is amended to read:

**“85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest; or the written consent of the person with the possessory interest; in the property where the water is to be put to beneficial use, *or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;*

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection

must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section."

**Section 9.** Section 85-2-312, MCA, is amended to read:

**"85-2-312. Terms of permit.** (1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

(b) *If the permit is for use of water with a point of diversion, conveyance, or place of use on national forest system lands, the permit is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water under the permit and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.*

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement



of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. If ~~a permit commencement of the appropriation works, completion of construction, or the actual application of water to the proposed beneficial use~~ is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit.

(4) The original of the permit must be sent to the permittee, and a copy must be kept in the office of the department in Helena.”

**Section 10.** Section 85-2-316, MCA, is amended to read:

**“85-2-316. State reservation of waters.** (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) (a) *The department shall adopt rules that are necessary to determine whether or not an application is correct and complete based on the provisions*

*applicable to issuance of a state water reservation. The rules must be adopted in compliance with Title 2, chapter 4.*

*(b) An applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under this subsection (3) that are in effect at the time the application is submitted. The department shall proceed in accordance with 85-2-302 with regard to any defects in the application.*

*(c) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.*

~~(3)(d)~~ Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental ~~impact statement~~ *analysis* must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

~~(4) (a) The~~ *Except as provided in [section 1], the department may not adopt an order reserving water unless shall issue a state water reservation if the applicant establishes to the satisfaction of the department by a preponderance of evidence:*

- (i) the purpose of the reservation;*
- (ii) the need for the reservation;*
- (iii) the amount of water necessary for the purpose of the reservation;*
- (iv) that the reservation is in the public interest.*

~~(b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order reserving water for withdrawal and transport for use outside the state unless shall issue a water reservation for withdrawal and transport for use outside the state if the applicant proves by clear and convincing evidence that:~~

- (i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and*
- (ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.*

~~(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:~~

- (i) whether there are present or projected water shortages within the state of Montana;*
- (ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;*
- (iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and*
- (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.*

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams ~~may be allocated at the discretion of the department~~ *are not subject to the limit under this subsection.*

~~(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation. A state water reservation issued under this section has a priority of appropriation dating from the filing of a correct and complete application with the department.~~

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

~~(9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:~~

~~(a) A state water reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a state water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a state water reservation.~~

~~(b) Upon receiving a notice of intention to apply for a state water reservation, the department shall identify all potential state water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a state water reservation with the priority of appropriation as described in subsection (9)(a).~~

~~(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete state water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing the application.~~

~~(d) The department may by order subordinate a state water reservation to a permit or a certificate for ground water development issued pursuant to this part if:~~

~~(i) the permit application or the notice of completion of ground water development was accepted by the department before the date of the order granting the reservation;~~

~~(ii) the effect of subordinating the reservation to one or more permits or certificates for ground water development does not interfere substantially with the purpose of the reservation; and~~

~~(iii) in the case of a certificate for ground water development, the reservant consents to the subordination.~~

~~(e) The department shall by order establish the relative priority of state water reservations approved under this section that have the same day of priority. A state water reservation may not adversely affect any rights in existence at that time.~~

~~(9) A state water reservation issued under this section may not adversely affect any rights in existence at that time. The department may issue a state water reservation subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria of this section.~~

~~(10) The Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete. Except as provided in [section 1], the department shall, periodically but at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.~~

~~(11) The Except as provided in [section 1], the department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water~~

reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.”

**Section 11.** Section 85-2-319, MCA, is amended to read:

**“85-2-319. Permit action in highly appropriated basins or subbasins.** (1) With regard to a highly appropriated basin or subbasin, *except as provided in [section 1]*, the legislature may by law preclude permit applications or the department may by rule reject permit applications or modify or condition permits already issued.

(2) A rule may be adopted under this section only upon a petition that is signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department of environmental quality that alleges facts under subsection (2)(d). The petition must be in a form prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

- (a) there are no unappropriated waters in the source of supply;
- (b) the rights of prior appropriators will be adversely affected;
- (c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or
- (d) in the case of a petition filed by the department of environmental quality:
  - (i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department shall study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permit holder of water in the source.

(5) The department may adopt rules to implement the provisions of this section.”

**Section 12.** Section 85-2-331, MCA, is amended to read:

**“85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) *The Except as provided in [section 1], the state, an agency or political subdivision of the state, or the United States or an agency of the United States that desires to apply for a state water reservation in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:*

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for state water reservations within the Missouri River basin and the Little Missouri River basin.

(3) *Except as provided in [section 1], the department shall:*

(a) ~~The department shall~~ make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for state water reservations in the Missouri River basin above Fort Peck dam.

(b) ~~The department shall~~ make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for state water reservations in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) ~~The department shall~~ determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) *State Except as provided in [section 1], state water reservations approved by the department under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issued a permit under Title 85, chapter 2, part 3, prior to the granting of a state water reservation under this section, the department may subordinate the state water reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any state water reservation. If the department issued a certificate for ground water development under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the department may subordinate the reservation to the certificate if it finds that the subordination does not interfere substantially with the purpose of any reservation and the reservant consents to the subordination. The department shall by order establish the relative priority of applications approved under this section.*

**Section 13.** Section 85-2-336, MCA, is amended to read:

**“85-2-336. Basin closure — exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; or

(e) *an application submitted pursuant to [section 1, Article VI]; or*

(~~e~~)*(f) an application for power generation at existing hydroelectric dams.*

The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) ~~Applications~~ *Except as provided in [section 1], applications* for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(4) ~~The~~ *Except as provided in [section 1], the* department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316.”

**Section 14.** Section 85-2-341, MCA, is amended to read:

**“85-2-341. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not

process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) *an application submitted pursuant to [section 1, Article VI];* or

~~(e)~~(f) temporary emergency appropriations as provided for in 85-2-113(3).”

**Section 15.** Section 85-2-343, MCA, is amended to read:

**“85-2-343. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage;

(f) *an application submitted pursuant to [section 1, Article VI];* or

~~(f)~~(g) temporary emergency appropriations as provided for in 85-2-113(3).”

**Section 16.** Section 85-2-344, MCA, is amended to read:

**“85-2-344. Bitterroot River subbasin temporary closure — definitions — exceptions.** (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) “Bitterroot River basin” means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as “Basin 76H”.

(c) “Bitterroot River subbasin” means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as “Subbasin 76HA”;

(ii) the north end subbasin, designated as “Subbasin 76HB”;



- (iii) the east side subbasin, designated as "Subbasin 76HC";
- (iv) the southeast subbasin, designated as "Subbasin 76HD";
- (v) the south end subbasin, designated as "Subbasin 76HE";
- (vi) the southwest subbasin, designated as "Subbasin 76HF";
- (vii) the west central subbasin, designated as "Subbasin 76HG"; or
- (viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not process or grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

- (a) an application for a permit to appropriate ground water;
- (b) an application for a permit to appropriate water for a municipal water supply;
- (c) temporary emergency appropriations pursuant to 85-2-113(3);
- (d) *an application submitted pursuant to [section 1, Article VI];* or
- (~~d~~)*(e)* an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more.

(3) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

**Section 17.** Section 85-2-401, MCA, is amended to read:

**"85-2-401. Priority — recognition and confirmation of changes in appropriations issued after July 1, 1973.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, ~~85-2-310(3)~~ 85-2-310(4), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department."

**Section 18.** Section 85-2-402, MCA, is amended to read:

**"85-2-402. (Temporary) Changes in appropriation rights — definition.** (1) (a) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and

subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

*(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.*

*(c) As used in this part, "national forest system lands" has the same meaning as that provided in [section 1, Article I].*

(2) Except as provided in subsections (4) through (6), (15), and (16) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2], the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2], the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the

department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) *If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.*

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The

appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. *If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.*

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this ~~section~~ subsection (16).

(17) *The department shall accept and process an application for a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2] and this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)*

**85-2-402. (Effective July 1, 2009) Changes in appropriation rights — definition.** (1) (a) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change

in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

*(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.*

*(c) As used in this part, "national forest system lands" has the same meaning as that provided in [section 1, Article I].*

(2) Except as provided in subsections (4) through (6), (15), and (16) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2], the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2], the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and



(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete. *If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.*

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. *If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until after the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.*

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this ~~section~~ subsection (16).

*(17) The department shall accept and process an application for a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2] and this section."*

**Section 19. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 2].

**Section 20. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 2007

## CHAPTER NO. 214

[SB 282]

AN ACT CLARIFYING THAT IF A PERSON GIVES WARNING OF RECORDING A CONVERSATION, EITHER PARTY MAY RECORD; AMENDING SECTION 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 45-8-213, MCA, is amended to read:

**“45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording, *and if one person provides the warning, either party may record; or*

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3) (a) A person convicted of the offense of violating privacy in communications shall be fined *an amount* not to exceed \$500 or *be* imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) “Electronic communication” means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.”

**Section 2. Effective date.** [This act] is effective July 1, 2007.

Approved April 17, 2007

## CHAPTER NO. 215

[SB 285]

AN ACT REVISING THE CAPITOL COMPLEX MASTER PLAN BY EXCEPTING THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER FROM THE DEFINITION OF “CAPITOL COMPLEX” SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER MASTER PLAN REQUIREMENTS DO NOT APPLY TO THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER; AMENDING SECTION 2-17-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-17-802, MCA, is amended to read:

“**2-17-802. Definitions.** As used in this part, the following definitions apply:

(1) “Capitol complex” means the capitol building and all the state buildings within a 10-mile radius of the capitol building *but does not include the Montana wildlife rehabilitation and education center.*

(2) “Council” means the capitol complex advisory council established in 2-17-803.

(3) “Legislative council” means the legislative council established in 5-11-101.”

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

Approved April 17, 2007

## CHAPTER NO. 216

[SB 286]

AN ACT REVISING THE RESTRICTIONS ON THE NAMING OF CERTAIN BUILDINGS, SPACES, AND ROOMS IN THE CAPITOL COMPLEX; PROVIDING THAT THE CAPITOL BUILDING MAY NOT BE NAMED AFTER ANY PERSON; AMENDING SECTION 2-17-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-17-807, MCA, is amended to read:

**“2-17-807. Approval for displays and naming buildings, spaces, and rooms.** (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. *The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.*

(2) (a) Except as provided in ~~subsection~~ *subsections (2)(b) and (2)(c)*, a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) *A public building within the capitol complex constructed with private funds after [the effective date of this act] or a space or room constructed with private funds after [the effective date of this act] in a public building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:*

*(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and*

*(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.*

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds.”

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

Approved April 17, 2007

## CHAPTER NO. 217

[SB 299]

AN ACT REVISING LAWS RELATING TO HERITAGE PRESERVATION AND CULTURAL TOURISM; PROVIDING FOR THE LEASE OR EXCHANGE OF HISTORIC PROPERTY; PROVIDING FOR HERITAGE PRESERVATION AND CULTURAL TOURISM COMMISSIONS; PROVIDING FOR THE DESIGNATION, ADMINISTRATION, AND PROMOTION OF HERITAGE AND CULTURAL TOURISM RESOURCES;

PROVIDING FUNDING; AMENDING SECTIONS 7-16-2201, 7-16-2205, AND 18-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Lease or exchange of historic property.** (1) A state agency, after consultation with the state historic preservation officer, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive uses, that are not needed for current or projected agency purposes. A state agency may lease a historic property owned by the state agency to any person or organization or exchange any property owned by the state agency for comparable historic property if the state agency head determines that the lease or exchange will adequately ensure the preservation of the historic property. If the consent of the board of land commissioners is required for a property exchange, the state agency must receive approval from the board prior to completing an exchange.

(2) The proceeds of any lease under subsection (1) may be retained by the state agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the state agency with respect to the property or other historic properties that are owned by, or are under the jurisdiction or control of, the state agency. Any surplus proceeds from the leases must be deposited into the appropriate fund at the end of the fiscal year in which the proceeds were received.

(3) The head of a state agency with responsibility for the management of a historic property may, after consultation with the state historic preservation officer, enter into contracts for the management of the property. A contract must contain terms and conditions that the head of the state agency considers necessary or appropriate to protect the interests of the state and ensure adequate preservation of the historic property.

(4) As used in this section, "state agency" means a department, board, commission, office, bureau, or other public authority of state government.

**Section 2.** Section 7-16-2201, MCA, is amended to read:

**"7-16-2201. Definition of museums *Definitions.*** For the purposes of this part, the ~~word~~ following definitions apply:

(1) "*Heritage and cultural tourism resources*" has the meaning provided in [section 5].

(2) "*Heritage preservation and cultural tourism commission*" means an entity organized pursuant to [section 6].

(3) "~~museums~~" "*Museums*" means buildings or parts of buildings of which a principal purpose is the exhibition, display, or performance of matters of historical, artistic, cultural, or scientific interest."

**Section 3.** Section 7-16-2205, MCA, is amended to read:

**"7-16-2205. Authorization for mill levy.** (1) The board of county commissioners of any county ~~owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202:~~

(a) (i) may make an appropriation in its annual budget for:

(i) the upkeep, care, maintenance, operation, and support of ~~the~~ a museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202;

(ii) *the support of a heritage preservation and cultural tourism commission and for heritage and cultural tourism resources;*

~~(ii)(iii) may make an appropriation in its annual budget for a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities, including a heritage preservation and cultural tourism commission; and~~

~~(b) in order to fund the appropriation or grant program, may, subject to 15-10-420, annually levy a tax on the taxable valuation of the property subject to taxation in the county for the purposes described in subsection (1)(a) of this section.~~

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made.”

**Section 4. Purpose.** The purposes of [sections 4 through 11] are to:

(1) assist the state and local governments in identifying, protecting, and promoting heritage and cultural tourism resources;

(2) further support local preservation programs and encourage participation in the Montana historical society Montana-certified local government program, provided for in [section 10];

(3) enhance the ability of localities and agencies to exhibit and advertise the heritage and cultural tourism resources of the state;

(4) stimulate business investment, assist in retaining existing small businesses, and promote new businesses related to heritage and cultural tourism;

(5) strengthen the local tax base;

(6) create employment opportunities for the people of the state; and

(7) generally enhance the economic viability of communities and regions of the state.

**Section 5. Definitions.** As used in [sections 4 through 11], the following definitions apply:

(1) “Heritage and cultural tourism resources” means sites, districts, routes of travel, objects, artifacts, or collections with demonstrable cultural, artistic, architectural, folkway, historic, prehistoric, or traditional qualities.

(2) “Montana historical society” means the entity established pursuant to 22-3-101.

**Section 6. Heritage preservation and cultural tourism commissions.** (1) Counties, consolidated governments, and municipalities may create heritage preservation and cultural tourism commissions or authorize existing historic preservation commissions to conduct heritage preservation and cultural tourism programs according to the provisions of [sections 4 through 11].

(2) A heritage preservation and cultural tourism commission must have at least five members. Commission members must have professional backgrounds and be trained in or have a demonstrated interest in historic preservation, the



arts or culture of the locality, and the tourism and economic development interests of the locality.

**Section 7. Commission duties.** (1) A heritage preservation and cultural tourism commission:

(a) may prepare a heritage and cultural tourism promotion and development plan, as provided in [section 8], and shall operate according to the provisions of that plan;

(b) must be operated in a manner that allows the county, consolidated government, or municipality to obtain support through grants and other funding assistance available for heritage and cultural tourism promotion and development programs and may solicit, request, and apply for funds;

(c) may own and lease property in its own name and may acquire property through bequest, purchase, lease, or other means except eminent domain;

(d) may hire and supervise staff consistent with the personnel regulations of the county, consolidated government, or municipality;

(e) may solicit, request, and apply for funds in the name of the commission; and

(f) shall identify, record, register, preserve, protect, develop, and promote heritage and cultural tourism resources.

(2) Funds may be budgeted and expended, including by contract, by the heritage preservation and cultural tourism commission in a manner consistent with the laws, rules, and regulations of the county, consolidated government, or municipality.

(3) A heritage preservation and cultural tourism commission shall prepare an annual report describing its activities and file the report with the appropriate county, consolidated government, or municipality.

(4) Upon the dissolution of a heritage preservation and cultural tourism commission, the property of the commission becomes the property of the county, consolidated government, or municipality.

**Section 8. Heritage and cultural tourism promotion and development plan.** (1) A heritage preservation and cultural tourism commission may prepare a heritage and cultural tourism promotion and development plan and shall operate according to the provisions of that plan.

(2) A heritage and cultural tourism promotion and development plan must be created in consultation with the tourism advisory council, the Montana historical society, the Montana arts council, and interested stakeholders, including businesses and institutions that have a demonstrable interest in cultural tourism, historic preservation, economic development, the arts, and cultural affairs.

(3) A heritage and cultural tourism promotion and development plan:

(a) may include but is not limited to:

(i) inventories of public displays and interpretations of heritage and cultural tourism resources;

(ii) mapping of and guidance to heritage and cultural tourism resources; and

(iii) advertising and promoting heritage and cultural tourism resources, economic development, heritage protection, and heritage incentives; and

(b) may recommend ordinances or resolutions to counties, consolidated governments, and municipalities to assist and protect the qualities of heritage and cultural tourism resources as long as those ordinances are based on uniform standards and procedures.

**Section 9. Cultural treasures — coordination.** (1) A heritage preservation and cultural tourism commission may designate individuals possessing the highest quality artistic, traditional, or folkway skills, talents, and knowledge as Montana cultural treasures and may conduct programs to honor and promote the individuals with the individuals' express consent and in a manner consistent with administrative rule.

(2) This section may be administered in conjunction with the treasure state living cultural treasures program provided for in 2-15-236 through 2-15-238.

**Section 10. Certified local governments.** (1) Counties, consolidated governments, and municipalities may participate in the Montana-certified local government program administered by the Montana historical society pursuant to the National Historic Preservation Act of 1966, 16 U.S.C. 470 through 470w-6.

(2) A county, consolidated government, or municipality that became a certified local government, as described in subsection (1), prior to [the effective date of this act] may participate in the program.

**Section 11. Highway signs.** Upon receipt of a petition from a heritage preservation and cultural tourism commission, the department of transportation shall erect and maintain signs designating heritage and cultural tourism resources along highways in the vicinity of the heritage and cultural tourism resources. The department of transportation shall accomplish the signing changes in accordance with the department's normal sign maintenance and replacement schedule.

**Section 12.** Section 18-2-105, MCA, is amended to read:

**“18-2-105. General powers and duties of department of administration.** In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

(4) *subject to [section 1]*, purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;

(5) issue and sell bonds and other securities;

(6) maintain an inventory of all buildings;

(7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest

responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time.”

**Section 13. Codification instructions.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 1, and the provisions of Title 2, chapter 17, part 1, apply to [section 1].

(2) [Sections 4 through 11] 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 4 through 11].

**Section 14. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

**Section 15. Effective date.** [This act] is effective July 1, 2007.

Approved April 17, 2007

## CHAPTER NO. 218

[SB 305]

AN ACT ALLOWING OFF-PREMISES DISPLAY AND SALE OF NEW MOTOR VEHICLES IN COUNTIES OTHER THAN THE COUNTY IN WHICH THE DEALER’S ESTABLISHED PLACE OF BUSINESS IS LOCATED UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 61-4-123, MCA.

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

**Section 1.** Section 61-4-123, MCA, is amended to read:

**“61-4-123. Dealer requirements and restrictions.** (1) A dealer may not offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer’s established place of business or any approved off-premises sale location a motor vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer’s guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the motor vehicle or is conspicuously displayed within the motor vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer’s established place of business as listed on the dealer’s license.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer’s established place of business as listed on the dealer’s license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. ~~Except for recreational~~ *Recreational* vehicle, motor home, or travel trailer

dealers, *may conduct* an off-premises display and sale ~~must be conducted within in a county other than~~ the county of the dealer's licensed location. *A new motor vehicle dealer whose area of responsibility under the dealer's franchise agreement includes a county different from the county in which the dealer's established place of business is located may conduct an off-premises display and sale, subject to the agreement, in the other county if there is no other new motor vehicle dealer with an established place of business in that county.* The display and sale *authorized by this subsection (4)(a)* may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more motor vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one motor vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the motor vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the motor vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays motor vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all motor vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any motor vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to a customer or that otherwise may be operated by a customer in the regular course of the dealer's business operations.

(b) A dealer shall ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory motor vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that motor vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Approved April 17, 2007

## CHAPTER NO. 219

[SB 364]

AN ACT REVISING PROVISIONS GOVERNING VACANCIES ON BOARDS OF COUNTY COMMISSIONERS; PROVIDING PROCEDURES WHEN MULTIPLE VACANCIES OCCUR THAT PREVENT ESTABLISHMENT OF A QUORUM; REQUIRING THAT APPOINTMENTS BE MADE BY THE COUNTY COMPENSATION BOARD OR BY THE DISTRICT JUDGE IF NO COMPENSATION BOARD EXISTS; REQUIRING APPOINTMENTS TO BE MADE FROM LISTS PROVIDED BY PARTISAN COUNTY CENTRAL COMMITTEES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 7-4-2106, MCA.

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

**Section 1.** Section 7-4-2106, MCA, is amended to read:

**"7-4-2106. Vacancy on board of county commissioners.** (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), 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."*

Approved April 17, 2007